

MEMO

28. April 2023

Statkraft's response to the consultation on Electricity Market Design Reform

Statkraft is pleased with the overall direction of the proposal

The European energy system has many challenges ahead, following Russia's invasion of Ukraine and the need for a rapid increase in the deployment of renewables. Market design plays an essential role in how the power system will respond to these challenges. The current framework has proved to deliver benefits including a high security of supply for decades and has also responded as expected to the current crisis where sudden and massive supply scarcity has resulted in higher prices.

Statkraft agrees with the European Commission that an integrated EU energy market is the most cost-effective way to ensure both affordable energy and security of supply for all customers. We therefore welcome the overall objective to evolve the current design with market-based solutions, keeping the fundamentals of the short-term electricity markets, marginal pricing and the merit order. Statkraft supports the focus on improving consumer protection and improving measures to mitigate risk in renewable investments. Through this, society's ability to reach climate goals, an efficient use of energy resources, energy independence and security of supply can be improved.

Below you find detailed comments to the European Commission's proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) 2019/943 and (EU) 2019/942 as well as Directives (EU) 2018/2001 and (EU) 2019/944 to improve the Union's electricity market design.¹ Furthermore, in the second part of this document you find our comments on the proposal for a Regulation on the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market.²

¹ In this document referred to as the proposed Regulation on electricity market design.

² In this document referred to as the proposed Regulation to improve protection against market manipulation.

Part 1: Statkraft's comments on the proposal to amend the Electricity Market Design rules

1. Measures for investments in new renewable power production

As a major power generator, developer, and financial participant in the European power market with activities in several Member States in the European Union, we agree with the Commission that it is vital with predictable conditions to incentivize new investments in renewable power production. We welcome the proposal's focus on having a liquid financial market for access to risk-mitigating tools which ensures such investments.

For the most cost-efficient projects to be developed first, Statkraft believes that investment decisions should mainly be market-driven and not based on government support. In our opinion, a functioning forward market is the basis for risk mitigation in a growing Power Purchase Agreement (PPA) market. Thus, it is key that Contracts for Difference (CfDs) do not displace forward markets and commercial PPAs.

Below we have provided more detailed comments on the proposals concerning direct support schemes and two-way contracts for difference (two-way CfDs), forward markets and PPAs.

1.1. Statkraft believes investment decisions should mainly be market-driven

The Commission has proposed that direct price support schemes for new investments in renewable generation shall take the form of two-way CfDs.³ Statkraft supports that participation in two-way CfDs or similar types of support schemes must remain voluntary and only apply to new investments.

1.1.1. Direct price support schemes for new investments must be limited to two-way CfDs
CfDs can be an appropriate way to support investments in new capacity where investments are not forthcoming on a market basis, and where investments are necessary to reach energy and climate goals. In that case, a two-way CfD would make the support element more dynamic and ensure that support is only provided when needed. This would also reduce public expenditures.

1.1.2. Potential proceeds from two-way CfDs should benefit the energy transition
The Commission has proposed that proceeds from two-way CfDs are distributed to all final customers based on the share of their consumption.⁴ Furthermore, it must be ensured that the distribution of the revenues is designed in such a way that it does not distort price signals.⁵

Being subject to price signals is key for customers to reduce energy consumption in times of scarcity, for facilitating the green shift and be less reliant on fossil fuels. Thus, it is important that such distribution does not distort price signals. Considering this, we recommend a lump-sum distribution of the proceeds instead of it being dependent on the share of the consumption of the individual final customer. This would avoid incentivizing consumption in times of high prices.

³ See Article 19b in the proposed Regulation on electricity market design Article 1(9).

⁴ See Article 19b(3) in the proposed Regulation on electricity market design Article 1(9).

⁵ See Article 19b(3) letter b in the proposed Regulation on electricity market design Article 1(9).

Furthermore, we recommend changing the obligation for a direct transfer of potential proceeds from two-way CfDs to final customers. It should be up to the discretion of the Member States to decide how to distribute such proceeds as long as it benefits the green transition, such as energy efficiency and demand response measures. The settlement of support should therefore be designed so that the settlement is dynamically distributed in compliance with State Aid guidelines benefitting the energy transition and the achievement of objectives set out in the integrated national energy and climate plans.

1.1.3. The scope of direct price support schemes should be limited

The starting point should be that investments in generation technologies that can be carried out on a commercial basis should be realized without governmental two-way CfDs or other types of investment support schemes. We therefore propose to limit the applicability of two-way CfDs to projects necessary to reach energy and climate goals, where the technologies are early on the learning curve and where the CAPEX is really high.

1.1.4. Direct price support schemes should be clearly defined

For investors to fully grasp the implications of this provision, it is vital to better define what constitutes direct price support schemes in the proposal. From the broad definition of support schemes in the Renewable Energy Directive⁶ it seems to exclude instruments such as investment aids and tax exemptions, while feed-in tariffs and sliding or fixed premium payments are included.⁷

It therefore seems that direct price support schemes in general are targeted towards producers. Furthermore, when reading the provision, it seems that such two-way CfDs should only be an alternative for new investment in power production, meaning that grid-related schemes such as feed-in tariffs are excluded. However, in order to clarify, we propose to the following definition of “*direct price support schemes*”:

‘Direct price support scheme’ means an instrument, scheme or agreement applied by a Member State, or a group of Member States, limited to new generation investments using technologies early on the learning curve and necessary to reach energy and climate goals, directed towards renewable generators during the production period, excluding investment support and tax exemptions.’

1.2. Statkraft recommends addressing the further development of the European forward market in ACER’s revision of the FCA guideline

It is proposed to amend Article 9 in the Electricity Regulation⁸ and require ENTSO-E to submit a proposal for the establishment of regional virtual hubs for the forward markets to ACER.⁹ This proposal shall, among others, define the geographical scope of such virtual hubs, include a methodology for the calculation of the reference prices of the virtual hubs and include a definition of financial long-term transmission rights.

We agree that the forward market is the most suitable tool for smaller customers to hedge against risks. We therefore strongly support initiatives that promotes effective, efficient and

⁶ DIRECTIVE (EU) 2018/2001 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 11 December 2018 on the promotion of the use of energy from renewable sources.

⁷ See the Renewable Energy Directive Article 2(5).

⁸ REGULATION (EU) 2019/943 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 5 June 2019 on the internal market for electricity.

⁹ See the proposed Regulation on electricity market design Article 1(6).

liquid forward markets. However, we have some concerns regarding the current proposal. We therefore recommend to not amend the Electricity Regulation Article 9 at this time.

1.2.1. Virtual hubs have served the Nordic market well

Introducing virtual hubs would move the forward market to a model more similar to the Nordic forward market design. In our opinion, such a system has served the Nordic market well. Virtual hubs are a good design to combine liquidity from several, smaller bidding zones, in order to not fragment liquidity. We therefore welcome the opportunity to keep and develop this solution for the Nordic market.

At the same time, we acknowledge that such virtual hubs might not necessarily work well across all Member States. We question whether it is advisable with such fundamental changes, having unknown and unpredictable consequences for liquidity in the forward market, in a time with an increasing and urgent need for more investments.

Statkraft is supportive of ACER's policy paper on the further development of the financial forward market, where they have argued for a similar model to the one the Commission proposes. To address the further development of the common European forward market, including introducing virtual hubs should be part of the ACER's revision of the FCA guideline.

Thus, our proposal is to not amend the Electricity Regulation Article 9 at this time. However, given that the Commission decides to move forward with the proposal despite our concerns, Statkraft suggest certain amendments below.

1.2.2. EPADs should remain as an option in the Nordic forward market

It is proposed that ENTSO-Es proposal should include a definition of financial long-term transmission rights (FTRs) from bidding zones to the virtual hubs for the forward market. In order for us to further preserve and develop the Nordic model where EPADs already exists, it is key that we would still be allowed to have "equivalent measures" to long-term transmission rights (LTTRs). In our opinion, a solution with virtual hubs combined with EPADs is better suited where there are several bidding zones within a country. This means that if the Commission decides to go through with the current proposal to amend Article 9 in the Electricity Regulation, the possibility for TSOs to have equivalent measures instead of issuing LTTRs must remain in the provision.

LTTRs are less appropriate for models with more bidding zones, with reference to the Nordic area with 12 bidding zones, 19 inter-Nordic cross-zonal transmission lines and 10 transmission lines to external countries (bidding zones); without including Russia. If LTTRs are introduced in the Nordic region, we would see the introduction of 43 different products. This would dilute liquidity in the Nordic market even further. With EPADS, 12 products would be sufficient. Statkraft recommends that if virtual hubs are introduced, the regulation should state that EPADs may be used in regions with several bidding zones.

Having said that, we support the Commission's initiatives strengthening the market for, and access to, LTTRs. As such, we support that they should be issued with maturities up to three years ahead.¹⁰

1.2.3. NEMOs should be part of the development of virtual hubs

¹⁰ See Article 9(4) letter c in the proposed Regulation on electricity market design Article 1(6).

According to the proposed Regulation on electricity market design Article 1(6), ENTSO-E would be responsible for submitting a proposal for the establishment of virtual hubs to ACER. We are concerned about signing such a key role to ENTSO-E who already have many tasks to solve. If ENSTO-E would be assigned this task despite our concerns, the Commission should consider including NEMOs in this process, as some NEMOs also organise forward markets today.

1.2.4. NordPool should be responsible for calculating the system price for the Nordic region

The proposal from ENTSO-E shall include a methodology for the calculation of the reference prices for the virtual hubs. It is NordPool which is responsible for calculating the hub (system) price today for the Nordic region. The Nordic TSOs do not have an active role in the Nordic forward market (with the SvK pilot as an exception). Thus, we do not believe ENTSO-E alone would be best suited to develop a methodology for the hub price in the Nordic market.

1.3. Commercial tools such as Power Purchase Agreements in combination with financial instruments should remain a key tool to mitigate risk

Commercial tools such as PPAs in combination with financial instruments are and should remain the main tool in the market for producers and customers to mitigate risk. Statkraft therefore supports that Member States shall facilitate the continued development of PPAs. We are especially in favour of facilitating for more credit-support schemes in order to reduce the financial risks and accelerate demand, which currently constitutes one of the main barriers for developing the PPA market. We note that it would also be important to avoid mandatory standardized requirements for PPA agreements as one of the main benefits with PPAs is that they can be tailor-made and accommodate desired deliveries and risk aversion for both parties.

The Commission has proposed in Article 19a(4) that Member States, when awarding support schemes, can give preferential treatment to projects which have signed a PPA for part of the generated volume. The aim is to incentivize access to the PPA market. Generally, Statkraft supports initiatives that further accelerate PPAs. However, we take note that the Commission seems to be under the impression that support schemes such as CfDs and PPAs play complementary roles.¹¹ Among others, they state that “*Member States should ensure that support schemes do not constitute a barrier for the development of commercial contracts of PPAs.*”

Our view is that government backed support schemes affect the use and development of commercial risk reducing instruments such as PPAs. Government support schemes may be a tool to realize projects that are not otherwise commercially profitable, both by reducing risk and potentially providing an additional income on top of the market price. Such new projects will affect market prices. This increases the risk that other commercial projects, using commercial risk reducing instruments, are not developed if they are no longer profitable. Furthermore, the use of government backed support schemes will disincentivise the renewable developer to use commercial risk mitigating measures, reducing both the supply side of commercial contracts and thus remove some of the tools available for industry and consumers to mitigate their risk. As such, the liquidity in forward

¹¹ See recital 36.

markets will be reduced. This In order to mitigate these effects, we are in favor of limiting the scope of government support schemes.

2. Enhanced consumer protection

Generally, Statkraft welcomes the Commission's work to achieve better consumer protection and protection against price volatility across the Union. An important stepping-stone to protect customers is to empower customers to respond to price signals.

2.1. Access to affordable energy during an electricity price crisis

The Commission has included a new provision regulating when Member States are allowed to apply public interventions in price setting in the proposed Regulation on electricity market design Article 1(10).

Statkraft is pleased with the Commissions intention to not extend the application of the Council Regulation on an emergency intervention to address high energy prices¹², including the “revenue cap”, beyond 2023. Statkraft welcomes initiatives to give more predictability about when Member States can intervene in price setting, and agree that standardization is a step in the right direction.

2.2. Support for increased hedging requirements for suppliers

The Commission has proposed a new Article 18a in the Electricity Directive, requiring regulatory authorities to ensure that suppliers have in place and implement appropriate hedging strategies.¹³ It is unclear what *appropriate hedging strategies* would entail and this would to a large part depend on national implementation. As such, the aim should be to ensure that suppliers having fixed price contracts with consumers, are viable for such contractual obligations also when the contracts do not include a fixed volume.

However, to enable suppliers to fulfil a hedging strategy obligation, opportunities for power price hedging in the financial market must be provided. Thus, instead of requiring suppliers to hedge, national authorities should rather prioritize improving liquidity in the Nordic financial market, both for system price contracts and the EPAD market.

Firstly, we recommend less strict collateral requirements for clearing of financial contracts for participants with underlying production or consumption. Furthermore, the decrease of liquidity in system price contracts could be partly remedied by increasing transmission capacity between bidding zones, reducing the price difference with the system price. TSOs could also contribute more actively in the supply and demand of EPADs. Finally, we remind of our support to ACER's work on the further development of the financial forward market, discussed in chapter 1.2.

3. Flexibility, trading rules and measures to reduce electricity demand

3.1. The definition of *flexibility* should be adjusted to *system flexibility*

¹² Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

¹³ See the proposed Regulation on electricity market design Article 1(4).

The Commission has proposed a new definition of *flexibility* as “... the ability of an electricity system to adjust to the variability of generation and consumption patterns and grid availability, across relevant market timeframes.”¹⁴

From our understanding, this definition of *flexibility* refers to the grids capability to adapt to variations caused by adjustments in generation and consumption. Thus, this definition is not to be confused with flexibility connected to customers’ ability to change their consumption in order to better match demand with supply, also often referred to as demand response.

For the sake of clarity, we therefore propose that the definition of *flexibility* is adjusted to *system flexibility*.

3.2. Statkraft supports more opportunities to trade on an equal and non-discriminatory basis

Generally, Statkraft is positive to initiatives which ensure that the maximum available capacity and opportunities for trade are made available to the market. This means that we support the amendments to the Electricity Regulation Article 8 in the proposed Regulation on electricity market design Article 1(5) to move the intraday cross-zonal closure time to 30 minutes before the time of delivery, in order to maximise our opportunities for trade.

To improve liquidity in the intraday market and ensure equal access to such opportunities for trade, we support the proposed amendments to the Electricity Regulation Article 7 (2)(c)¹⁵ to share order books between market operators within a bidding zone after the gate closure time of the intraday markets.

3.3. NEMOs’ commercial activities should not interfere with MCO activities

The Commission has proposed to include that they are empowered to adopt guidelines and network codes where the single day-ahead and intraday coupling is operated by a single entity.¹⁶ We relate this with ACERs proposal to establish a single legal entity performing the MCO tasks in the work on amending CACM¹⁷.

In general, we agree that NEMOs’ commercial activities should not interfere with MCO activities, the latter being monopolistic activities. Furthermore, we recognize that establishing one separate single, legal entity performing MCO tasks would be more cost efficient, compared to several NEMOs performing this function. However, the invasiveness of a proposed requirement should be proportionate to the purpose it’s intended to serve. We strongly believe that the conflict of interest between NEMOs’ commercial activities and MCO tasks could be solved using less invasive methods than establishing a separate legal entity to perform the MCO tasks. Furthermore, we fear that such a proposal would represent a significant risk of loss of professional competence and regional anchoring.

Our proposal is therefore to start with less invasive measures by requiring legal and functional unbundling of the NEMOs’ commercial tasks and their MCO tasks, instead of establishing a separate single legal entity.

¹⁴ See the proposed Regulation on electricity market design Article 1(2)(80).

¹⁵ See the proposed Regulation on electricity market design Article 1(3)(a).

¹⁶ See amendments to the Electricity Regulation Article 59(1) letter b in the proposed Regulation on electricity market design Article 1(13).

¹⁷ COMMISSION REGULATION (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management.

3.4. The proposal for a peak-shaving product should be removed

3.4.1. The proposal for a peak-shaving product should be removed

The Commission has introduced a peak shaving product that the TSOs may procure in order to achieve a reduction of electricity demand during peak hours in a proposed new Article 7a in the Electricity Regulation.¹⁸ Peak-shaving product is proposed defined by the inclusion of a new definition in the Electricity Regulation Article 2(74)¹⁹ as “... *a market-based product through which market participants can provide peak shaving to the transmission system operators.*” Furthermore, peak shave is also defined in a proposed new definition in the Electricity Regulation Article 2(73)²⁰ as reduction of demand during peak hours.

From our understanding, such reductions could either happen by reducing consumption in given hours, or by shifting such demand to other hours, with the overall aim of preventing overloading the transmission and/or distribution grid. In our opinion, this objective is already secured through the products which already exist in the balancing markets. Thus, we find it unnecessary to introduce a new product at this time. Furthermore, we believe system operators are better suited to identify the products and services with which they need to operate the transmission and distribution systems, and that specific products should not be outlined in the legislative framework.

Given the above, we suggest removing the proposal for a peak shaving product, including its corresponding definitions. However, if the Commission decides to move forward with the proposal despite our concerns, Statkraft suggest certain amendments below.

3.4.2. A peak-shaving product should be available to all system operators

The proposal prescribes that peak shaving products are only procured by the TSOs. However, both TSOs and distribution system operators (DSOs) are in need of market-based tools to react to price signals and reduce or increase demand and supply in certain hours, in order to prevent overloading the grid. Today DSOs often use the tariff scheme to incentivize such load shifting. Given this, we do not see the reason for a peak-shaving product to be reserved for TSOs only, considering that this could have negative effects on the liquidity of other DSO flexibility markets. We would therefore propose to allow DSOs to procure peak-shaving products.

3.4.3. Peak-shaving products are not a non-frequency ancillary service

It is proposed to include peak-shaving products as a non-frequency ancillary service.²¹ However, peak shaving is defined as a market-based product²², contrary to the other services listed as non-frequency ancillary services such as black start capability and island operation capability. Thus, we propose to not define peak-shaving as a non-frequency ancillary service.

4. Access to grid capacity

¹⁸ See the proposed Regulation on electricity market design Article 1(4).

¹⁹ See the proposed Regulation on electricity market design Article 1(2).

²⁰ See the proposed Regulation on electricity market design Article 1(2).

²¹ See the proposed new definition in the Electricity Directive Article 2(49) of the proposed Regulation on electricity market design Article 2(1)(a).

²² See the proposed new definition in the Electricity Regulation Article 2(74) of the proposed Regulation on electricity market design Article 1(2).

4.1. Statkraft supports more transparency on grid capacity

The Commission has proposed several amendments concerning TSOs and DSOs publication of information relating to available capacity for new investments, both by amending Article 50 and Article 57 in the Electricity Regulation²³, and proposing an amendment to the Electricity Directive Article 31²⁴. In light of the increasing need for more capacity to ensure new connections in the coming years, we support this proposal with the aim of ensuring more transparency.

4.2. Rules for production offshore and on land should be harmonized

The Commission has proposed an amendment to Article 19(2)²⁵, where TSOs can use congestion income to compensate offshore generation plant operators if access to the interconnected markets is limited due to reduced capacity on the interconnector.

For the sake of harmonization, Statkraft is of the opinion that the same rules should apply for production on land and offshore. Thus, we do not support a proposal which opens up for different compensation schemes depending on the characteristics of the power plant.

Having said that, we see several arguments in support of extending the proposal to operators on land. According to Norwegian regulations, the TSO can order the concessionaries to adapt its production to restrictions in the transmission grid due to planned outages.²⁶ The producers are not compensated for such planned and/or longer lasting reductions in capacity affecting production, meaning that the TSOs are not affected by the societal costs caused by such outages. Since mandating the TSOs to cover some of the costs might incentivize them to keep such planned limitations in capacity at a minimum, we believe the Commission should consider extending the proposal to amend the Electricity Regulation Article 19(2) to both generation plant operators offshore and on land.

²³ See the proposed Regulation on electricity market design Article 1(11) and Article 1(12).

²⁴ See the proposed Regulation on electricity market design Article 2(7).

²⁵ See the proposed Regulation on electricity market design Article 1(8) letter b.

²⁶ See forskrift om systemansvaret i kraftsystemet av 7. mai 2022 nr. 448 (systemansvarsforskriften) § 8b.

Part 2: Statkraft's comments on the proposal to amend the REMIT Regulation

5. Statkraft supports a revision of REMIT

The Commission has proposed several amendments to the legal framework on energy market integrity and transparency, REMIT²⁷. Statkraft is generally positive towards a revision of REMIT after more than a decade in force and the objective of having a transparent market with effective enforcement, ensuring the integrity of the energy market. However, we are concerned about the current proposal. Below you will find more detailed comments on the proposed amendments we more most concerned about.

5.1. It should be clarified which contracts should be considered under the REMIT framework as wholesale energy products

Article 1(2)(f) of the proposed Regulation to improve protection against market manipulation widens the scope of REMIT not only contracts with delivery in the EU, but also to contracts which "*may result in a delivery in the Union*". It is not clear which contracts are considered here as the EU has coupled markets with non-EU countries (e.g. with Norway) and it is also not clear how this extraterritorial approach should work. For instance, power contracts that are traded within Norway may be considered to "*may result in a delivery in the Union*" due to the market coupling and would then even be subject to REMIT reporting.

5.2. We propose to delete the inclusion of Market Correction Mechanism (MCM) in the REMIT framework

New Articles 7a to 7d, proposed in Article 1(8) in the proposed Regulation to improve protection against market manipulation, incorporates the Market Correction Mechanism (MCM) for LNG into REMIT. We propose the deletion of the entire sections as it would turn the intermediate MCM into a permanent obligation which is contrary to the intention when agreeing on the MCM in the first place. In addition, this is a mechanism that is unrelated to the prohibition of market manipulation and insider trading and should not be regulated in REMIT.

5.3. Investigating powers should not be extended to ACER

New Articles 13 to 13b, proposed in Article 1(15) in the proposed Regulation to improve protection against market manipulation, contains quite excessive powers for ACER to directly investigate in the individual countries. It is unclear on the basis of which procedural rules ACER would carry out investigations and inspections and under which procedural rules market participants could defend themselves. It substantially undermines the authority of the national regulators. Instead, we recommend strengthening the cooperation between the individual national regulators and ACER.

5.4. Obligations to notify all suspected breaches to ACER should not be extended to all market participants

The Commission has proposed amendments to REMIT Article 15, in Article 1(15) in the proposed Regulation to improve protection against market abuse, obliging all market participants to identify breaches and to notify ACER and the relevant national regulatory authorities of any suspected breach of Article 3, 4 or 5 of REMIT. While we agree that this

²⁷ REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency.

should be an obligation for all persons professionally arranging transactions (e.g. exchanges, brokers, platforms etc.) this obligation should not be extended to market participants trading on own account. First, this extension violates the fundamental right of all market participants not to incriminate themselves. Secondly, there is no requirement for such obligation as all market participants are already under the surveillance of the PPATs, the national regulators and ACER. Third, an obligation of each market participant to establish and maintain effective arrangements and procedures to identify breaches and to notify the authorities violates the cost-effectiveness principle.

5.5. Penalties should not be unnecessary high

The Commission has proposed to amend Article 18 in REMIT²⁸, providing a framework for maximum sanctions that Member States are supposed to lay down in their national laws for infringements of REMIT. This includes that the penalty for breaches of the Articles 3 and 4 (market manipulation and insider trading) of REMIT could be up to 15% of the total turnover in the preceding business year. This could easily lead to a penalty of more than € 1 billion for either Statkraft Energi AS or Statkraft Markets GmbH. While we support generally a unified framework of potential sanctions throughout the EU, we consider this level as inappropriate and unnecessary.

²⁸ See the proposed Regulation to improve protection against market abuse Article 1(19).