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ANNEX 2

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REPowerEU: Joint European Action for more affordable, secure and sustainable energy

ANNEX 2

Guidance on the application of infra-marginal profit fiscal measures

In the current crisis situation, Member States may exceptionally decide to take tax measures that seek to capture some of the returns that certain electricity generators gain.

Redistributing revenues from fiscal measures on infra-marginal rents to final electricity consumers would partly prevent that current high gas prices increase the costs incurred by final customers. It would also while preserve efficient marginal wholesale electricity prices needed for efficient dispatching and market coupling in the European single electricity market. However, such a measure would nonetheless need to be carefully designed to avoid unnecessary market distortions, while incentivising additional investment in renewable energy. This includes notably the following:

- The duration of the measure should be limited and tied to a specific crisis situation;
- The measure should not affect the formation of wholesale electricity prices based on marginal costs expressed by the merit curve, hence preserving the efficiency of price signals for short-term operational decisions. In case of any doubt, lower levels of excess gains should be clawed back to avoid impacts on price formation;
- Long-term price trends resulting from structural market developments and the carbon price signal from the EU ETS should not be affected. This is so as not to interfere with long-term price signals that contribute to the coverage of fixed and investment costs, incentivizing investments in capacity needed for a decarbonised and reliable power system;
- It has to be noted that some of the increase in global gas prices has a structural component (which could be defined on the basis of average prices over time). The tax should not deal with the effects of this structural component.
- The method for the calculation of rents that are to be considered 'excessive'– linked to the specific crisis environment - and the trigger/deactivation mechanisms would have to be clearly specified and justified. To avoid any arbitrary use that would result in heavy distortions, the 'windfall profits' and the "trigger/deactivation" mechanism would have to be defined on the basis of objective and verifiable criteria and events. These could for example the deviation from an average of global gas prices over a sustained period of time and the number of hours that gas sets the price in the electricity system. The duration of the tax should be also clearly limited in time, not going beyond 30 June 2022, on the basis of these well-defined criteria.
- The additional infra-marginal rents should be clawed back only in the time periods when gas plants were marginal and to the extent that such additional infra-marginal rents were effectively earned by infra-marginal units;
- The measure should not distinguish different generation technologies. It should include any infra-marginal units operating in the hours of application of the tax, e.g. infra-marginal rents from hard coal and lignite-fired generation, renewables (including hydropower) and nuclear;
- The measure should equally apply to all generators regardless of whether they are covered by support schemes or capacity remuneration mechanisms. However, it should be taken into account that some support schemes by their nature already avoid (feed-in tariffs), capture (two-way contracts for difference contracted before

the gas price crisis) or reduce (floating premiums) infra-marginal rents in periods of high prices. The specific situation of fixed premium could be addressed, which can increase infra-marginal rents.

- The measure should not be retroactive and should only claw back a share of profits that were actually made. Thus, it needs to take into account that generators may have sold part of their production forward at a lower price before the crisis began. Energy which has not profited from higher electricity market prices because it was already sold forward should be exempted from claw back measures.
- Revenue from the measure should be passed on to households or in non-selective and transparent measures supporting all final consumers (e.g. an explicit separate discount on electricity bills of final customers proportional to their average daily or weekly consumption).

It is to be noted that, insofar as exemptions from such profit taxes lead to selective advantages to specific undertakings, State aid rules may apply.