



STATEMENT

by the Bulgarian Photovoltaic Association, UIC: 175801326

Subject: Draft law implementing Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices

The Bulgarian Photovoltaic Association (BPVA) is a non-profit association that unites over 650 companies from the photovoltaic industry and 750 MW of installed capacity from renewable sources. Among our members are investors and producers of energy from photovoltaic plants, project designers, installers, companies developing projects, financial institutions, investment intermediaries and consultants, scientific and educational organisations. The BPVA supports and works to improve the investment climate and environment for investments in the production of environmentally friendly energy from the sun, a stable and predictable regulatory environment and the promotion and accessibility of photovoltaic technology for every business and household.

On behalf of the BPVA's Board of Directors, I bring to your attention our statement regarding the informally received Draft law for the implementation of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices.

I. Regarding compliance with the objectives and scope of the Regulation

The proposed bill does not correspond to the scope, measures and objectives of Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices (the Regulation), in their entirety and content. The mechanisms that the European Council (EC) has adopted to deal with the high energy prices in the upcoming winter are bound in the norms of the Regulation, and only cumulatively implemented in their entirety can achieve the desired result. There are three main pillars that have been announced and are the foundation of the measures adopted by the EC. The first is a reduction in consumption, the second is the introduction of a cap on the market revenues that some producers receive and the third is their targeted redistribution to end customers of electricity with a view to opening up the possibility for Member States to intervene in the determination of electricity supply prices for residential customers and small and medium-sized enterprises (SMEs). In addition to the third pillar, the EU establishes rules for the payment of a mandatory temporary solidarity contribution by companies in certain industries, which also contributes to a more affordable energy price for households and SMEs.

In the draft law, the texts on reducing consumption, listed in Article 3, Article 4 and Article 5 of Chapter II of the Regulation, as well as the restrictions on targeted redistribution to end customers of electricity of excess income, regulated in Article 8, Article 9, Article 10, Article 11, Article 12, Article 13 of the Regulation are not covered.

Such a piecemeal approach makes the proposed draft law not only incomplete, but also replacing the essence and spirit of the Regulation, which the Council of the EU adopted in an extraordinary order.



II. Regarding the compliance of the proposed texts with the norms of the Regulation

The proposed texts of the draft law, regarding the introduction of a cap on market revenues, do not use the concepts and procedures established in the Regulation, which have precise and clear definitions and application. They are incomplete and contradictory, open to different interpretations and, accordingly, are a prerequisite for arbitrary application. Thus proposed, the texts of Art. 3 of the draft law are in conflict not only with specific norms of the Regulation, but also far exceed the tasks and objectives that the Regulation itself introduces. The mandatory protection in the Regulation of the income of producers from renewable sources who have contracts on preferential prices and/or contracts based on differences (resp. contracts on premiums) up to the amount of the initial preferential price is not implemented clearly and unambiguously, a mechanism is proposed (Art. 3, Para. 1 and Para. 2), which de facto completely revises the support scheme, for which there are active compensation contracts, by introducing quasi-indicators that are inapplicable to investments in renewable sources and violate already concluded contracts. The intended mechanism for making targeted contributions (Article 3, Paragraph 3) contradicts the definitions and norms of the Regulation, which define concepts such as "market revenues", "surplus revenues" and the norms of Article 6 and Article 7, and further harms the interests of producers, and the defined income cap is practically not guaranteed. The proposed texts (Art. 3, Para. 2) retroactively impose restrictions and obligations on manufacturers for legal relationships under already terminated contracts, which is legally inadmissible. Thus, the goals that the Regulation itself sets for the member states in Art. 8, namely that the measures applied are proportionate and non-discriminatory are being violated.

Such an approach not only replaces the norms of the Regulation, but is a signal to investors and financial institutions about the unpredictability and uncertainty of the regulatory environment, based on a vague and unfounded legislative act.

In addition, we propose to take into account the need for entirely new texts to follow the Regulation, adopting also the following norms:

1. Apply Art. 7, Paragraph 3 of the Regulation and exclude from the scope of the determined revenue cap producers of electrical energy with plants with an installed capacity of up to 1 MW;
2. Apply Art. 7, Paragraph 5 of the Regulation, which stipulates that the market revenue cap can only be applied to 90% of the market revenue exceeding the specified market revenue cap;
3. Not to apply a lower cap of market revenues than defined in Art. 6, Paragraph 1 of the Regulation;
4. To introduce a price cap for the shortage of the balancing market for the period of operation of the cap of market revenues of electricity producers, which is not tied to the hourly prices of the Day Ahead market segment of the IBEX;
5. To cancel the obligation of electricity producers under Art. 36e, Para. 1, item 1 of the Law on Energy for the period of validity of the cap of market revenues;
6. Refer to Art. 8, Paragraph 2, letter b) of the Regulation, which enables the application of the rules in the Member States not to jeopardise the investment signals by excluding from the application new investments in plants for the production of energy from renewable sources, commissioned after January 1, 2020.



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The opportunity that the Regulation provides to not stop investments in renewable sources and to take advantage of the potential to more easily overcome the effects of the looming economic recession is important to be utilised. The suspension of investment interest will have a medium-term negative effect on economic activities and the modernisation of the energy sector.

20 October 2022
Sofia

BULGARIAN PHOTOVOLTAIC ASSOCIATION



Българска Фотоволтаична Асоциация

София 1000, бул. Витоша 42, ет.2, ап.3 • тел.: + 359 2 4422228 • office@bpva.org • www.bpva.org