



POSITIONING OF THE  
**ASOCIACIÓN PARA LA  
TRANSICIÓN ENERGÉTICA**  
ON THE EUROPEAN COMMISSION  
PROPOSAL TO IMPROVE  
THE EUROPEAN ELECTRICITY  
MARKET DESIGN

## EXECUTIVE MEMO

The *Asociación para la Transición Energética* (ATE, Association for Energy Transition) considers:

- The definition of a new European electricity market design should not be made in response to a specific crisis and, as such, it supports the reform, limited, proposed by the EC.
- It is necessary to strengthen the single energy market in the EU:
  - By fostering fair competition in the industry by eliminating/limiting/controlling state aid.
  - The declaration of a crisis and the measures to navigate through it should be the competence of the EU.
  - By establishing the principles to define a vulnerable consumer.
- The four mechanisms proposed are adequate:
  - Marginalist market in the short term.
  - Long-term contracts between consumers and producers (PPAs).
  - Voluntary contracts for difference (CfDs) and for hypothetical cases in which market rules are not sufficient.
  - Capacity mechanisms (storage) to ensure supply and facilitate the introduction of renewables.
- It would be appropriate:
  - To make a better and more complete analysis of the role played by demand to be able to keep in step with measures that ensure supply to industrial consumers who wish to decarbonise.
  - To promote legal certainty in the face of regulatory changes and monitor the effects of measures, such as the gas price cap, that can have negative effects on investments in renewable energies and in reaching the objectives of the Green Deal.
  - To consider the issue of self-consumption of energy communities in European regulation.

# 1

## INTRODUCTION

The *Asociación para la Transición Energética* (ATE, Association for Energy Transition)<sup>1</sup>, to fulfil its founding mission, makes an analysis of all Spanish and EU initiatives on the relevant issues affecting energy transition. One of these is the process of reforming the European energy market.

In this regard, the ATE has provided comments to the public consultation of the European Commission<sup>2</sup> on the proposal for the regulation COM/2023/148 final. The association actively follows the positioning of all interested parties in Spain and Europe, especially proceedings in the European Parliament and European Council, attending seminars and debates on the issue.

Additionally, in collaboration with the *Instituto de Ingeniería de España* (IIE, Engineering Institute of Spain), the ATE organised an analysis session on June 7<sup>th</sup>, 2023 to which different stakeholders, institutions and media were invited. At this session, more than 20 experts actively participated<sup>3</sup> in an open debate. The various speeches, which the ATE has used to prepare this positioning paper, were organised around two main issues:

- The impact of the reform on investment decisions to achieve the objectives of the Green Deal and energy transition.
- The impact of the reform for the consumer, both in productive and domestic sectors, in terms of cost and opportunity.

In the roundtable, and keeping in mind the proposal from the European Commission on the draft opinion under consideration in the Committee on Industry, Research and Energy (ITRE) and the positions expressed by EU Member states, in particular in Spain, several matters of consensus were identified, which are included in the section on “General Principles”, as well as items that should be taken into account in the future European and national regulation on electricity market design, which are included in the section “Specific Issues”.

Based on accumulated knowledge and, in particular, on contributions made in the roundtable discussion at the IIE, the ATE has outlined its position and is open to presenting it, defending it and, when applicable, perfecting it with all interested parties.

<sup>1</sup> The ATE is a non-profit association whose founding mission is to facilitate debate on the different aspects of energy transition, based on an understanding that civil society, who is the recipient, consumer and ultimately the funder of it, should actively participate in this debate. The ATE exists to raise awareness within society on the need for change, to encourage debate on available alternatives, and to promote a fair energy transition. <https://atenergetica.es/>

<sup>2</sup> Feedback from the ATE: [https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13668-Electricity-market-reform-of-the-EUs-electricity-market-design/F3422870\\_en](https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13668-Electricity-market-reform-of-the-EUs-electricity-market-design/F3422870_en)

<sup>3</sup> Representatives from ICAI, BBVA Research, UNEF, AEE, APPA Renovables, AEGE, AEPIBAL, ENTRA-Coalición, Red Eléctrica, AELEC, AEDIVE, CEPYME, Iberdrola, EDP, NATURGY and ATE.

The aim of the ATE with this action is for those who have to make decisions within Europe and Spain to be able to evaluate its proposals as an organisation of Spanish civil society.

The ATE, as an independent and non-profit association, does not defend the interests, however legitimate they may be, of one or more interested parties. It attempts, with varying success, to identify the most relevant aspects for protection of the general interest, which in the case of electricity must include security of supply, environmental, social and economic sustainability of its production and distribution, and protection of consumers, whether domestic or business.

At the ATE, we are aware that how the electricity market operates is a complex question and one that is difficult to understand for non-experts. The price volatility suffered by domestic and business consumers attracted their attention to pricing, types of contracts and their effects on the price of electricity. Unfortunately, the companies who supply energy as well as the institutions and administrations have not contributed to giving useful information to the consumer. It would be advisable for the EU and Member States to take on this task.

## 2

### GENERAL PRINCIPLES

1. The ATE, with the ultimate goal of a socially just energy transition, economically sustainable and in solidarity with developing countries,<sup>4</sup> defends harmonisation of European energy market rules in order to maintain the single energy market – which has been operating successfully for more than 20 years<sup>5</sup>– and the goals for security of supply and strategic autonomy for each country.
2. The ATE maintains that a change in the design of the structural market for electricity should not be made to respond to a specific circumstantial crisis, and that such a change of design would require a process of reflection and analysis with wide participation from all stakeholders, a process that has not occurred in the adoption and processing of the reform proposal spoken about here.
3. The ATE considers the orientation of the reform, limited, proposed by the European Commission relevant in the sense that it is necessary to materialise, in efficient and immediate measures, the painful lessons learned during the energy crisis exacerbated by the Russian invasion of Ukraine. It is necessary to make the design more resilient to the vicissitudes of production and distribution of electrical energy in the context of decarbonisation of energy consumption. To do this, it is necessary to simultaneously address security of supply and consumer access to electricity, which ultimately must consider the cost for domestic consumers and under conditions that improve the competitiveness of productive sectors.

<sup>4</sup> See the ATE Manifesto at <https://atenergetica.es/media/attachments/2021/11/24/manifiesto-ate-noviembre-2021.pdf>

<sup>5</sup> Directive 96/92/EC.

4. The ATE has witnessed the effects on some consumers of the volatility in energy prices, also but not only for electricity, and the harmful effects of this on domestic and business consumers, first, and on revision of the objectives and rhythms of the transition itself. Assessing the different alternatives that have been explained by experts and institutions, it is considered appropriate for the market design to be built around the four tools proposed by the EC: i) In the short term, to maintain and strengthen the daily and intraday market under the marginalist market principle; ii) For the long term, promote stable contracts emerging from pacts between the parties (power purchase agreements, PPAs) taking care on liquidity risk; iii) Voluntary contracts for difference (CfDs) if market development is not sufficient to reach European objectives; and iv) Capacity mechanisms for facilities that play a specific role in security of supply<sup>6</sup>, integration of renewables, and protection of industrial consumers.
5. CfD contracts should be voluntary and a complement to the PPAs if private initiative is not sufficient to achieve the European renewables target. They must be regulated in such a way that they are resold publicly (*with free access to all marketers and consumers*), making renewable energy available to consumers with higher counterparty risk or who require shorter contracting periods. And they should not start from a single definition of how much and what type of technology should be negotiated through this instrument.
6. It is a general consensus among experts that the market is more efficient at giving the right signals to consumers and investors in production than government-led planning. Prices are an appropriate indicator to cover both variable operating costs and fixed investment costs and facilitate the entry of renewable energies. However, for the backup required to ensure the firmness (firm capacity), inertia, voltage and frequency of the system, tools are needed<sup>7</sup> to attract investments in storage<sup>8</sup> and which allow the viability of the nuclear and combined cycles the necessary time until full decarbonisation of the electricity sector is reached.
7. Without limiting the foregoing, regulatory and monitoring institutions should exercise effective surveillance over the functioning of the market and the conduct of agents to ensure that there are no situations or behaviours that affect security of supply, energy independence and, in particular, access to electricity at competitive prices for the different categories of consumers. It is therefore essential not to fracture the European principle of a level playing field.

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<sup>6</sup> Storage (hydro-electric pumping plants), nuclear and combined cycles.

<sup>7</sup> Capacity mechanisms.

<sup>8</sup> 11 GW according to Spain's current PNIEC (National Climate and Energy Plan), more if targets for renewables are increased when it is revised.

8. Both the declaration of an energy “crisis” and the measures to mitigate its effects must be determined and implemented in the European context of the single market and social and interterritorial solidarity. “National” measures that depend solely on the will or capacity of each Member State will lead to situations of inequity and will affect consumers and the competitiveness of other Member States.

Additionally, we consider it essential to end as soon as possible the exceptional measures taken for the crisis by the various Member States since, as the European Commission itself says, they have stopped making sense and have discouraged investment (lengthening dependence on fossil fuels). Their unnecessary extension can produce distortions that discourage investments in renewables by generating even more uncertainty if, once the reason that motivated the interventions disappears, the measure remains. It would be particularly serious to allow the different states to have discretion, and for some states to eliminate them and others to keep them. Spain should maintain only those interventions supported by the European Union or else it will lose attractiveness for investment, with the consequences that this implies.

9. There is an urgent need to make rapid progress in capacity markets both at the European and Member State level, with incentives to invest in storage and determine precisely what the limits are in order to not distort competition. In their development, the principle of technological neutrality should be applied as well as the fostering of technologies that allow more integration of renewables, without forgetting that the system needs firmness and inertia.
10. It is also urgent to promote investments in networks to anticipate the future demand for electricity needed for decarbonisation and is also necessary to address existing administrative difficulties. Today, the capacity of current networks, based on current regulation, conditions development of industrial projects based on decarbonisation of energy consumption. Decarbonisation cannot be based only on developing renewables, but rather it is necessary to make the required investments so that these renewables reach the consumers who choose to decarbonise their energy use.
11. Increase energy interconnections to allow for a more integrated European system and enabling better management of renewable power plants at the European level.

## 3

### SPECIFIC ISSUES

In our opinion, a number of relevant issues have not been sufficiently covered by the reform proposals submitted so far:

#### **A better and more complete analysis of the role played by electricity demand**

First, the proposal for reform of the European electricity market must delve deeper into the importance of both industrial and domestic demand and not just on issues which, of course, are relevant, such as how vulnerable consumers are treated or the multiplicity of rates that the retail consumer can access at any given time.

The consumer is currently very exposed to market volatility and should have better knowledge about the mechanisms that give them access to the best rate depending on their circumstances. Multiplying the number of rate plans does not help in regard to better information and decision-making. In the case of consumers who require special protection because they are in a vulnerable situation, the most effective measure is direct aid from the State<sup>9</sup>.

Second, it is necessary to harmonise the qualification of 'vulnerable consumer' under Eurostat standards, applicable in each Member State based on their real income level adjusted for purchasing power parity and their energy consumption alternatives.

Third, for industrial consumers, it is necessary to deepen the market mechanisms that allow them to secure the supply forward (for example, in the case of public renewable energy auctions (CfDs) that today only the wholesale market benefits from, preventing this energy from being available to consumers). Industrial consumers need long-term contracts within a stable framework.

Finally, an item in which demand will play an essential role is in ensuring supply. Therefore, it is necessary to open up the services from transmission system operators (TSOs) and distribution system operators (DSOs) as much as possible for aggregate demand formulas, congestion services, etc.

<sup>9</sup> Like some Member States are already doing, such as France with their energy cheque

### **A revision of the framework for State Aid in regard to energy**

As already noted above, it is necessary to eliminate or limit the risk of unfair competition linked to exceptions or reductions in requirements associated with direct and indirect state aid granted to productive sectors to mitigate the impact of the price of energy.

The unfair competition caused by public aid that states with economic capacity (Germany, France, etc.) can arrange for their industries affects the competitiveness of industries in other states. Aid for energy costs authorized by the European Union for industry under no circumstances should allow a price to be reached for a country's industry that is lower than what countries in the Union have who have made the most progress in decarbonisation.

### **Common approach to tolls, charges and taxation**

Without questioning the competence of each state to define its energy and tax policy, always within the framework of the common objectives linked to the transition to an economy that is low in greenhouse gas emissions, it seems appropriate to address the issue of tolls and charges and to ensure that taxation does not distort the prices of the different energy sources.

Finally, there are unresolved problems with long-term contracts from the point of view of taxes and accounting (for example, PPAs are considered risk products subject to a mark-to-market valuation from both an accounting and tax perspective). Another aspect that must be definitively eliminated is the mandatory inframarginal energy auctions as they are inconsistent with the objective of strengthening long-term contracts, given that they would force withdrawal of a part of the energy that was already sold forward to final consumers.

### **Monitoring measures that harm investment in renewables**

The regulatory plan proposed, as well as the decisions that have been taken by ACER, are favourable to monitoring both one-time and structural measures that may harm investment in renewables. This is what is happening with the earnings cap on inframarginal technologies, even resulting in these measures showing a lack of effectiveness. Ninety-five percent of inframarginal facilities had sold the electricity forward, and for this reason have barely had earnings (€370M versus a projected €12B).

### **A revision of the generation mix that reduces price volatility**

The massive penetration of intermittent renewables in the power generation mix is causing large price differences depending on the time of day. With demand spikes of 35GW, introducing up to 60GW of installed power in the coming years is a major challenge for price stability. In the last decade, the average wholesale price has been €45/MWh. But now we are seeing prices of €100/MWh as a daily average, with volatilities between €0 and €200. This has very major consequences as it fosters, or doesn't foster, investments. In this context, storage is more important than ever as it can reduce price differences between different times of the day. In addition, it is urgent to promote forward contracts and the reduction of volatility in regulated rates.

### **Legal certainty in the face of regulatory changes**

Predictability and stability are essential for a pricing plan that is not subject to the volatility that has marked the recent energy crisis. It would therefore be necessary to introduce mechanisms in the reform that address the risk of Member States introducing opportunistic regulatory changes that discourage investments in low GHG-emitting energies.

### **Definition of energy crisis**

Also, as has already been noted, the past crisis cannot be the mould used to define a market. It is necessary to distinguish what is circumstantial from what is structural. By their very nature, crises are unpredictable. So what the reform should anticipate are mechanisms for their identification and declaration, as well as defining the measures to be taken. Moreover, the reform proposal does not take into account the rest of the energy sector when it is fully interrelated. An electricity crisis may be caused by, or related to, or be a causal agent of a gas or fossil fuel crisis.

Such mechanisms and measures should be established within the EU institutions and not fall under the exclusive competence of each Member State. All of this notwithstanding that a crisis can be declared (with previously defined parameters and uniform implementation at the European level) but ensuring that the measures taken are consistent at the European level, preventing the crises from deepening differences between citizens of the EU Member States.

### Aggregation of demand

The EC proposal should address the issue of self-consumption, both industrial and domestic, which has developed very unevenly in the different states in the Union. The time has come to standardise processes and evaluate them according to energy transition needs and the industrial strategy that European institutions have committed to for the coming years.

With regard to individual self-consumption, it is urgent to address the issue both from the perspective of investment (many small investments in generation and storage elements that overlap, producing a multiplied financial cost for each industry) and from the perspective of assuring supply (the risk of blackouts in adverse weather conditions in facilities that cannot widely manage their surpluses) and network predictability and manageability (a more unstable network, with more insecurity when it comes to providing the correct signals of demand and production). Based on these objective difficulties, the alternative of shared self-consumption arises, which requires technological innovation to efficiently manage generation and consumption.