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The EU's Emergency Intervention against High Energy Prices: Implications for the Visegrad Group Countries

Abstract: The energy market in the European Union has recently faced significant external influences, which have resulted in turbulent developments in wholesale energy markets. The extraordinary and sudden increase in electricity prices and the imminent risk of further increases required a joint solution by the Member States at the end of 2022. On 6 October 2022, the Council of the European Union adopted Regulation 2022/1854 on Emergency Intervention to Address High Energy Prices, which establishes an emergency intervention to mitigate the effects of high energy prices through exceptional, targeted and time-limited measures. In this paper, the authors focus on the legal framework adopted to introduce the mandatory cap on market revenues to electricity producers in the countries of the Visegrad Group (the Czech Republic, Hungary, Poland and Slovakia).

Keywords: cap on market revenues, energy, financial law

Introduction

The energy market in the European Union has recently faced significant external influences resulting in turbulent development in wholesale energy markets. The European Commission writes the following in its 2022 State of the Energy Union report (European Commission, 2022):

Gas and electricity prices have hit all-time highs in 2022. Over the past year, electricity prices in Europe have rapidly risen to a level much higher than in recent decades. This dynamic is intrinsically related to the high price of gas, which increases the price of electricity produced from gas-fired power plants. Prices started rising rapidly during the second half of 2021 when the world economy picked up after COVID-19 restrictions were eased. Subsequently, Russia's invasion of Ukraine has exacerbated this situation.

Member States have gradually adopted measures to stabilise the situation on the electricity market – examples include regulated energy prices, social tariffs, energy vouchers, temporary subsidies for private and business consumers, and reductions in energy-related taxes (most often VAT) and network tariffs. The extraordinary and sudden rise in electricity prices and the imminent risk of further increases called for an EU-level solution at the end of 2022. The single solution at EU level adopted with Regulation 2022/1854 has helped to avoid serious distortions of the internal market. Rumpf and Banet conclude, regarding Regulation 2022/1854, that '[t]he adoption of short-term market intervention measures by the Council preserved (so far) the balance between continuous reliance on EU energy market rules and short-term national priorities' (Rumpf & Banet, 2023, p. 376). One of the measures adopted was the obligation for Member States to introduce a mandatory cap on market revenues for electricity producers; the role of the European Commission is only to provide guidance in the implementation of that duty. At the time of writing, the European Commission has not yet issued any guidance to Member States in this context; the absence of guidance has contributed significantly to the diversity of measures taken at Member State level. At the end of 2022, Eurelectric's report to Commissioner Kadri Simson says: 'The current patchwork of national implementation measures is harming the integrated internal electricity market and undermining investments in much-needed renewable and low-carbon infrastructure. We urge the Commission to provide clear guidance and examples of best practices to Member States on how to properly implement the Regulation' (Eurelectric, 2022).¹

Considering the variety of national measures adopted to introduce a cap on market revenues for electricity producers, our primary objective in this paper is to define the financial legal institute of a mandatory cap on market revenues for electricity producers in Czech, Hungarian, Polish and Slovak national laws. The secondary objective is to compare the national legislations under consideration with each other. In order to achieve these goals, standard scholarly methods will be used, especially description, analysis and synthesis. Regarding sources, literature on financial law, internet sources and relevant legal regulations are used.

1 Eurelectric is the European Association of Electricity Companies.

1. Electricity markets in the EU

Electricity and gas markets in the EU are characterised by physical and commercial interconnections between Member States, so price fluctuations in one market translate into price volatility in the others. From the physical perspective, the power system should be seen as a complete network made up of interconnected generation installations, transmission and distribution systems and connected users. In terms of commercial transactions, the gas and electricity markets' state of functioning is the result of liberalising tendencies that started in the late 1990s.² A consequence of this liberalisation was the emergence in 2007 of a market for the supply of electricity and natural gas to all customers. The liberalisation of the electricity and gas markets has brought consumers a choice of energy supplier, transparency and easier access for energy suppliers to the markets of other Member States. On the other hand, however, customers were also often exposed to unfair practices by energy suppliers, as well as to greater risk resulting from market volatility and their low level of awareness of the risks of entering the free market. For the purposes of this paper, it is also important to note that the supply side of the wholesale market consists of electricity producers and electricity suppliers, both of which can trade electricity bilaterally or on a centralised multilateral platform.³ Jones (2016, p. 15) states: 'The liberalisation of the energy sector is based first and foremost on the separation of the regulated network activities on the one hand and the opening of the supply and generation markets on the other. Maintaining the monopolistic structure of network operation should enable competition on the generation as well as the supply segments.'

2. Emergency intervention according to Regulation 2022/1854

Before discussing the actual nature of the emergency intervention introduced by Regulation 2022/1854, let us briefly review the process that preceded the latter's adoption. The Council's power to adopt this Regulation derives from Article 122(1) of the Treaty on the Functioning of the European Union (TFEU). As for the process of adoption of Regulation 2022/1854 itself, it should be noted that this was decided by the Council by qualified majority, without being subject to the approval of the European Parliament. The adoption of the legislation by the extraordinary legislative procedure undoubtedly made it quicker and easier to pass.

It must be noted that Regulation 2022/1854 was not clearly agreed at Council level. The Slovak and Polish delegations opposed the adoption. The Slovak economy

2 For further detail, see Directive 90/547/EEC of 1990; Directive 96/92/EC of 1996; and Directive 98/30/EC of 1998.

3 The electricity supplier carries out the sale of electricity to customers, including its resale; see Article 2(12) of Directive (EU) 2019/944 of 2019.

minister said on the topic: ‘I was against what was approved. The proposal is inadequate from Slovakia’s point of view, even though there have been modifications to it. But the measures do not primarily solve our problems’ (Pravda, 2022). It should be noted that not every Member State that agreed to the adoption of this Regulation accepted the application of Article 122 TFEU. The delegations of Estonia, Latvia, Poland, Croatia, Slovenia and Hungary presented differing views (Council of the European Union, 2022).⁴ Nevertheless, Regulation 2022/1854 was successfully adopted and has become legally binding for all Member States.

As mentioned above, Regulation 2022/1854 constitutes an emergency intervention in the functioning of the energy market and contains provisions to mitigate the effects of high energy prices through exceptional, targeted and time-limited measures. The measures introduced by the Regulation are defined in its Article 1 and can be divided into two categories in terms of sectoral focus: measures related to the electricity market (reduction in electricity consumption; introduction of the cap on market revenues for electricity producers) and measures relating to the crude petroleum, natural gas, coal and refinery sectors (introduction of a compulsory temporary solidarity contribution to help EU companies and permanent establishments with activities in the crude petroleum, natural gas, coal and refining sectors to contribute to the affordability of energy for households and businesses). The primary object of the research in this paper is the cap on market revenues for electricity producers, so we will deal below with this measure only. It would be well beyond the scope of this paper to examine and compare other measures in the Visegrad Group countries.

3. Measures concerning the electricity market

Regulation 2022/1854 introduced two measures concerning the electricity market: the first is a mandatory reduction in electricity consumption, and the second is the capping of market revenues for electricity producers and the redistribution of surplus revenues and congestion revenues to electricity end users. The market revenue cap is to be applied to electricity producers and, where relevant, to intermediaries.⁵ According to the Article 8(1)(a) of Regulation 2022/1854, Member States may also ‘maintain or introduce measures that further limit [...] the market revenues of other market participants, including those active in electricity trading’. As we men-

4 At the time of writing, ExxonMobil Producing Netherlands BV (Breda, Netherlands) and Mobil Erdgas-Erdöl GmbH (Hamburg, Germany) have challenged Regulation 2022/1854 before the Court of Justice of the European Union (Court of Justice, 2023).

5 Intermediaries are legally defined in Article 2(8) of Regulation 2022/1854 as ‘entities in wholesale electricity markets of Member States constituting an island not connected to other Member States with unit-based bidding where the regulatory authority has authorised those entities to participate in the market on behalf of the producer, excluding entities that transfer the surplus revenues directly to final electricity customers’.

tion in the introduction, supply in the wholesale market is represented by both electricity producers and electricity traders. In our view, this aspect (the possibility of different settings at EU level) creates an unbalanced position for electricity producers and traders on the electricity market.⁶

As mentioned above, Regulation 2022/1854 does not lay down uniform rules for the application of the measures adopted, including the cap on market revenues, but it only defines the main contours for the Member States. As stated in the introduction, this feature was also criticised by energy companies. The market revenues of producers obtained from the generation of electricity from the sources referred to in Article 7(1) shall be capped at a maximum of EUR 180 per MWh of the electricity produced (Article 6(1)). The market cap shall apply to all forms of electricity generation, including renewable sources; however, Regulation 2022/1854 also directly provides for certain exemptions (Article 7(2) and (4)). Given that the Regulation sets a cap on market revenues, Member States can be expected to set the cap at different levels for different forms of generation. For the sake of completeness, we add that, according to Article 8(1)(b) of the Regulation, Member States may also set a cap on market revenues exceeding EUR 180 per MWh for a specific source of electricity production if the investments and operating costs of the generator exceed this amount. When applying the cap, Member States may decide not to apply the cap to the full 100% of the surplus revenues, but to only 90% (Article 7(5)).

The positive aspect of Regulation 2022/1854 is that it does not allow Member States to dispose freely of the proceeds generated by the application of the cap but defines the underlying purpose for spending the allocated funds.⁷ Member States are expected to ensure that all surplus revenues resulting from the application of the cap are used to finance measures in support of electricity end users that mitigate the impact of high electricity prices on those customers, in a targeted manner (Article 10(1)). With regard to the distribution of surplus revenues and in the spirit of solidarity, Regulation 2022/1854 also defines the procedure for the Member States whose net electricity imports equal or exceed 100%. In this case, the Member States concerned have the possibility of concluding agreements with the main exporting Member State on the sharing of the surplus revenue.

The temporary nature of the measure is established in Regulation 2022/1854 by limiting the time period within which Articles 6, 7 and 8 should apply: the cap on electricity producers shall apply for the period from 1 December 2022 to 30 June 2023 (Article 22(2)(c)). In the light of this, in the context of the cap on market revenues for electricity producers, it can be summarised that Regulation 2022/1854 establishes:

6 Compare Article 8(2) of Regulation 2022/1854.

7 Compare, for example, the treatment of resources from the proceeds of greenhouse-gas emission allowance trading under Directive 2009/29/EC of 2009.

- A cap on the electricity producers' market revenues at a maximum of EUR 180 per MWh, allowing for exceptions as well as the possibility of setting different caps for different technologies;
- That the cap on the market revenues of the electricity producers also applies on the energy generated by renewable energy sources;
- Earmarked (targeted) use of surplus revenues from the application of the cap for financing measures to support electricity end users that mitigate the impact of high electricity prices on these customers;
- The possibility of an agreement between Member States on the appropriate distribution of surplus revenues.

4. Czech national legislation concerning the cap on market revenues

In the Czech Republic, the cap on market revenues was introduced by Act 365/2022 Coll. of Laws Amending Act 458/2000 Coll. of Laws on Business Conditions and the Exercise of State Administration in the Energy Sectors and on Amendments to Certain Acts (Energy Act), as Amended. The cap was adopted in the form of a levy on surplus revenue as of 1 December 2022. According to Article 93(2) of the Energy Act, as amended by Act 365/2022, the surplus revenue is the positive difference between the market revenue and the cap for the levy period. The method of determining surplus revenue was established by the Czech government by Decree 407/2022 Coll. of Laws on the Method of Determining the Amount of Surplus Revenues from the Sale of Generated Electricity.

It is noteworthy that the legislature applied the levy on surplus revenue at the lower limit allowed by Regulation 2022/1854. Act 365/2022 stipulates that the levy on surplus revenue shall apply to 90% of surplus revenues (§95(a)); this levy shall be collected for December 2022 for the first time. It is important to note that the last levy period is 2023, and pursuant to Article 95(c) of the Energy Act, as amended by Act 365/2022, the provisions of Regulation 2022/1854 relating to the levy on surplus revenue will also apply after 30 June 2023. Thus, we are of the opinion that the application of a cap on market revenues for electricity producers in the Czech Republic after 30 June 2023 may put them at a disadvantage in the EU market if other Member States do not do the same.

In the context of the Czech legislation, it is important to note two specificities in relation to the cap. The first peculiarity is that the cap is defined directly in Act 365/2022 and ranges from EUR 70 to EUR 240 per MWh, depending on the type of source of the generated electricity (§ 95(b)(1)). We consider that determining the cap at the level of a law increases its transparency, as well as the predictability of its level,

compared to setting it, for example, in the form of a sub-legislative norm.⁸ The second peculiarity is that in the case of electricity generation from gaseous biomass fuel, solid biomass fuel, and lignite in an electricity generation facility where the largest generating source's installed capacity is up to 140 MW, the cap is set at an amount exceeding EUR 180 per MWh (§ 95(b)(1)). The Czech Ministry of Industry and Trade commented on the method of setting the individual cap on market revenues as follows: 'The caps on market revenue for producers are set to cover in principle normal operating costs and potential investments. The specific caps on market revenue were set by an interministerial working group on the basis of an analysis of data from selected producers' (Ministerstvo Průmyslu a Obchodu, 2022). The Energy Regulatory Authority (Energetický regulační úřad) administers the levy from surplus revenues, and the proceeds of the surplus revenue contribution itself are an income for the national budget of the Czech Republic.

A summary of the national regulation adopted in the Czech Republic, which introduced a cap on market revenues for electricity producers under Regulation 2022/1854, may bring the following conclusions:

- *De lege lata*, the legal instrument is of a temporary nature, but the levy on the surplus (the cap on market revenues) is to be applied beyond the period defined in Regulation 2022/1854, also for the second half of 2023;
- In the case of the levy on surplus revenues imposed on the generation of electricity from gaseous biomass fuel, solid biomass fuel and lignite in an electricity generation facility where the largest generating source's installed capacity is up to 140 MW, the legislature took advantage of the possibility of establishing a cap above EUR 180 per MWh.

5. Hungarian national legislation concerning the cap on market revenues

In Hungary, Government Regulation 197/2022 introduced a special profit tax (*extraprofit adó*) in June 2022. In addition to other sectors of the economy, pursuant to § 3 of the Regulation, the special profit tax applied to selected producers of electricity from renewable sources with an installed capacity exceeding 0.5 MW, the so-called KÁT and MÉTÁR producers, and the tax rate was set at 65%.⁹ In the context of electricity producers, it is important to note that the entities to which the special profit tax applies was subsequently extended to include providers of ancillary services (a special form of service usually provided by producers or consumers of electricity)

⁸ Compare with the Slovak national rules.

⁹ The KÁT and MÉTÁR system is a previously established state subsidy scheme. The energy generated by renewable sources is purchased at a fixed price, as written in the detailed rules.

in October 2022; the tax rate for providers of ancillary services is set at 13% on revenues in 2022 and 10% on revenues in 2023 (Article 3(a) of Government Regulation 197/2022).

After having studied the available sources, we are of the opinion that a special profit tax for selected electricity producers had already been introduced in Hungary prior to the adoption of Regulation 2022/1854, therefore the country did not adopt any special national regulation for introducing a cap on market revenues for electricity producers (or electricity traders) under the EU Regulation. In the context of Hungary's situation, the cap on electricity producers' revenues introduced by Regulation 2022/1854 is perceived as a measure targeting renewable electricity producers. Tóth notes that under Article 7(3) of Regulation 2022/1854, the Member States have the option to not apply the cap to producers with an installed capacity of up to 1 MW or to electricity generated in hybrid installations that also use conventional energy sources (Origo, 2023). Tóth also adds: 'member states shall further have the option to decide that the cap on market revenues shall not apply to revenues derived from the sale of electricity on the regulated energy market and from compensation for re-dispatching and counter-trading' (Origo, 2023).

To summarise, in Hungary the income of electricity producers was already subject to a special tax before the adoption of Regulation 2022/1854. After reviewing the available sources, we found no new legislation that would impose a cap on market revenues for electricity producers.

6. Polish national legislation concerning the cap on market revenues

The introduction of the levy on surplus revenue in Poland was implemented in November 2022, when the Act of 27 October 2022 on Extraordinary Measures to Reduce Electricity Prices and to Support Certain Customers in 2023 came into force. The Act was heavily criticised by the Renewable Energy Association (see Zagórski, 2022). It introduces a levy on surplus profits; the law determines the rules and procedures for introducing a temporary obligation to contribute to a fund for the reimbursement of price differences, and the new levy is paid to the fund by electricity producers and traders. The duties are to be fulfilled in the period from 1 December 2022 to 31 December 2023. This levy will be calculated depending on the electricity generation technology, and the following variables will enter the formula: the volume of electricity sales, the volume-weighted average market price of electricity sales and the volume-weighted average price cap of electricity sales, all three variables measured for a given entity on a given day. The last variable was conditional on the adoption of relevant regulation by the Council of Ministers. On 8 November 2022, the Council of Ministers adopted the Regulation on the method of calculating the price

cap, which defines the method of calculating the cap depending on the electricity generation technology. The Regulation became effective as of 10 November 2022.

The Fund for the Reimbursement of Price Differences is administered by the clearing house for renewable energy support (Zarządca Rozliczeń energii odnawialnej S.A.). The principle of calculating contributions to the Fund separately for each day raises fundamental doubts. It means that the loss incurred on a given day cannot be offset by the profit from subsequent days (periods), which will be transferred in full to the Fund (above the agreed price cap on electricity sales). Contributions to the Fund will be paid monthly and will constitute a tax-deductible expense.

Contributions to the Fund apply to producers who produce electricity in a generation unit with an installed capacity exceeding 1 MW, using energy from renewable energy sources (wind, solar, geothermal, hydro, biomass) or energy from waste, lignite, black coal or liquid and gaseous fuels. For example, producers using biogas and agricultural biogas for electricity generation do not have to pay a contribution to the fund. Energy produced in renewable energy installations covered by the surcharge-based support and not accounted for by the clearing agent shall be subject to a levy to the Fund to the extent that the proceeds exceed the price of the winning auction bid for that project (taking into account the relevant statutory indexation). This requires setting a cap on prices individually for each project benefiting from surcharge-based support. The cap on prices will be different for December 2022 and different for contributions to the Fund for the Reimbursement of Price Differences in 2023 (taking into account the aforementioned indexation).

For installations using renewable energy sources not covered by the surcharge-based support, a levy shall be paid to the fund to cover price differences to the extent that the revenues exceed the reference price for the technology in the auction system in force at the date of calculation of the levy. The reference prices resulting from the Regulation of the Minister for Climate and Environment dated 31 October 2022 are currently in force (e.g. PLN 295 per MWh for wind installations, PLN 355 per MWh for photovoltaic installations). In the case of hydropower installations, the price cap is 40% of the reference price for the sale price of electricity, above which the levy is collected to the fund (currently PLN 270 per MWh). In the case of energy generated in biomass, coal or liquid or gaseous fuel installations, the legislature set a more extensive mechanism for calculation of the price cap for the sale price of electricity, above which the levy to the fund is payable, including for example the cost of the fuel burnt, a 3% margin (calculated in relation to the reference market value of energy on a given day), the cost of CO₂ emission allowances (for fossil fuels) and an investment allowance to cover fixed costs, of PLN 50 per MWh (uniformly for all technologies).

A summary of the national regulation adopted in Poland which introduced a cap on market revenues for electricity producers under Regulation 2022/1854 may bring the following conclusions:

- *De lege lata*, the legal instrument is of a temporary nature, but the levy on the surplus (the cap on market revenues) is to be applied beyond the period defined in Regulation 2022/1854, also for the second half of 2023;
- The surplus revenue levy applies to both electricity producers and electricity traders, i.e. every participant in the wholesale market.

7. Slovak national legislation concerning the cap on market revenues

In Slovakia, the cap on market revenues has been adopted by Act 433/2022 Coll. of Laws amending Act 251/2012 Coll. of Laws on Energy as Amended and Amending and Supplementing Certain Acts. Similarly to the Czech Republic, the cap in Slovakia was introduced by an amendment to existing energy legislation, namely Act 251/2012 Coll. of Laws on Energy on Amendment and Supplementation of Certain Laws as Amended and Amending Certain Laws (the New Energy Act). The legal institution that introduces the cap is the surplus revenue levy. The subject of the levy, which is denoted in the terminology as the payer, is defined by reference to the directly applicable EU regulation. It is worth noting that the Slovak national legislation does not consider an electricity trader as a payer of the surplus revenue, but as part of a vertically integrated entity (§ 25(a) of the New Energy Act). In the context of the subject of the levy, we further note that, in an extensive interpretation, it is possible to draw a partial conclusion that the legislature included certain hydropower plants with a reservoir, for example the Váh Cascade, among the payers of the levy in question, while Regulation 2022/1854 states that in the case of hydropower plants, the cap on market revenues shall be applied on hydropower without reservoirs (Article 7(1)(d)).

Surplus revenue itself is legally defined in § 25(b)(2) of the New Energy Act as ‘the positive difference between the market revenues and the cap on market revenues.’ It should be noted that the cap is not directly determined in this law, but is determined by the Decree of the Government 38/2023 Coll. of Laws, which establishes the method of determining the amount of extra income from the sale of produced electricity, the cap on market revenues, the costs of deviation, the scope of information necessary for monitoring and reporting to the European Commission, and the fixed electricity prices for determining the cap on market revenues of electricity produced from biogas, biomass, or highly efficient combined production (§ 2).

According to Article 25(f) of the New Energy Act, the cap on market revenues obtained from the sale of 1 MWh of electricity will be set between EUR 50 and EUR 250, depending on the type of source. The government may only increase the cap once it has been determined (Article 25(f)(5)). It is worth noting that the Slovak legislation also allows for a cap above the threshold set by Regulation 2022/1854, i.e. the government may even set a cap above EUR 180 per MWh in accordance with Article

8(1)(b) of Regulation 2022/1854. In our opinion, setting the cap by government decree, compared to it being set via primary legislation, creates the opportunity for its easier and faster modification, but on the other hand decreases the level of certainty for market participants.

The method of determining the surplus revenue is determined by Decree 38/2023 Coll. of Laws (§ 1). The surplus revenue levy is to be applied in the levy period from 1 December 2022 to 31 December 2024. It should be noted that the legislature in Slovakia also exceeded the period that was directly required by Regulation 2022/1854. We are of the opinion that if other Member States do not apply the cap on market revenues to their electricity producers after the date specified in Regulation 2022/1854 (30 June 2023), the application of the cap to electricity producers in Slovakia after that date may put them at a disadvantage vis-à-vis EU market competition.

The levy on surplus revenue in Slovakia is applied to 90% of it, i.e. the legislature did not use the possibility of charging the entire surplus revenue of obliged entities. Applying the 90% share is to maintain incentives for the market and to ensure the availability of electricity producers in situations of high demand (Explanatory memorandum, 2022).

The tax office competent for the administration of the income tax of the payer of the levy on excessive income, pursuant to Act 563/2009 Coll. of Laws on Tax Administration (the Tax Code) and on Amendments and Supplements to Certain Acts, administers the levy on surplus revenue. The designation of the competent tax authority is justified by the fact that it is the authority which is the most competent from a procedural point of view (Explanatory memorandum, 2022).

We consider it necessary to also point out that the levy on surplus revenue is not the first specific financial obligation for electricity producers in Slovakia. Since 2012, electricity producers in Slovakia have been obliged to pay a special levy on business in regulated sectors, which was introduced by Act 235/2012 Coll. of Laws on a Special Levy on Business in Regulated Sectors and on Amendments and Supplements to Certain Acts, as Amended. It is worth noting that this levy was also originally intended to be temporary in nature, yet it is still applied today. It is worth noting that the primary aim of the legislature in the case of this levy was also to share the burden of the effects of the global financial and economic crisis more fairly and economically.

A summary of the national regulation adopted in Slovakia which introduced a cap on market revenues for electricity producers under Regulation 2022/1854 may bring the following conclusions:

- *De lege lata*, the legal instrument is of a temporary nature, but the levy on the surplus revenues (the cap on market revenues) is to be applied until 2024, beyond the period defined in Regulation 2022/1854;
- The cap on market revenues is not regulated in primary legislation but by a government decree (Decree 38/2023 Coll. of Laws). At the same time, it

should be noted that the Slovak legislation also allows for a cap on market revenues above the level set by Regulation 2022/1854.

Conclusion

Electricity producers' market revenues are subject to specific financial obligations in all the countries examined. In the case of the Czech Republic, Poland and Slovakia, the relevant national legislation was approved at the end of 2022, establishing the legal framework for the cap, while the basic legal framework for this institute is regulated at EU level by Regulation 2022/1854. In these three countries, the cap was reflected in the introduction of a levy on surplus revenues, which was introduced in the case of the Czech Republic and Slovakia by an amendment to the legislative rules on energy, and in the case of Poland by the adoption of a separate law. The Czech Republic, Poland and Slovakia are planning to apply levies on surplus revenues for a longer period than required by Regulation 2022/1854.

In the case of Hungary, we have not identified any new obligation that would be introduced in the context of the cap on the market revenues of electricity producers under Regulation 2022/1854. At this point, it is important to note that according to Article 7(2) of the Regulation, the cap does not apply to producers whose revenues per MWh of generated electricity are already capped due to national or public-authority measures not taken pursuant to Article 8 of Regulation 2022/1854.

Despite the variety of measures, we consider that all of the examined Visegrad Group countries have agreed to some limitations on the available resources of electricity producers. Although the measures are described as temporary in nature, they are to be applied for a longer period than required by Regulation 2022/1854; in the case of Hungary, this period is not even defined. We believe that imposing financial obligations on electricity producers in the Visegrad Group for a longer period than in other EU countries will have a negative impact on the development of new investments in electricity generation. It is important to remember that electricity producers operate in the EU single market. Restricting their disposable incomes may have a significant negative impact on the development of generation capacities in the countries concerned, and this will also apply unconditionally to the generation of electricity from renewable energy sources. The regulatory risk for energy investments is also stated by Boute (2023, p. 205): 'Regulatory risks for clean energy investments are particularly high during energy crisis, as illustrated by the introduction of a cap on the revenues of clean energy investors in the EU to protect customers from high energy prices in 2022.' In our view, the negative aspect of the cap on market revenues is also the fact that under Regulation 2022/1854, it does not have to apply to every participant in the wholesale market but is targeted preferentially at electricity producers.

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