

# Potentials of EU competition tools and regulation in the energy crisis

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18 April 2023



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# What does energy crisis refer to?

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## The energy crisis of 2022

- ... is a “multiple supply” crisis in the natural gas, electricity and heat markets
- ... was caused mainly by the disruption of Russian natural gas imports
- ... was exacerbated by the simultaneous emergence of other shortages, such as the reduction of nuclear capacity in France, the phase-out of nuclear power in Germany and unfavourable conditions for hydropower generation and coal transport
- ... led to higher and more volatile prices on the energy markets
- ... with massive economic and social consequences outside the energy sector (eg inflation)
- ... differs from the oil crisis of the 1970s and 1980s in that it occurs in parallel with additional challenges resulting from long-term transformation goals.

# Nature and Functions of regulatory tools in an energy supply crisis:

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**Short-term measures** for immediate relief in emergency situations acknowledging that market forces as such cannot mitigate market disruptions caused by the crisis.

**Long-term measures/regulatory tools as policy instruments** to prevent recurrence of the crisis and, at the same time, to pursue long-term goals such as decarbonisation, increase of energy efficiency, and diversification of supply sources.

# Accumulation of regulatory tools in the crisis

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## Regulatory measures to ensure security of supply

- Requirements for filling targets and filling trajectories (Regulation (EU) 2017/1938)
- Updates of the three-stage natural gas emergency plans of the EU member states (Regulation (EU) 2017/1938)
- Voluntary and mandatory demand reduction measures (Regulation (EU) 2022/1854)

## Regulatory measures to “redistribute welfare”

- Revenue caps on electricity markets (Regulation (EU) 2022/1854)
- Solidarity contribution mechanism applying to fossil fuels (Regulation (EU) 2022/1854)
- Dynamic price cap on natural gas markets (Regulation (EU) 2022/2578)
- Electricity and natural gas price subsidies to final consumers (see national subsidy legislation, such as the German Electricity Price Brake Act and the German Natural Gas and Heat Price Brake Act)
- New electricity market design including measures to improve access to long-term PPAs for market participants with higher credit risks (Draft amendment of Regulation (EU) 2019/943).

# The function of competition law in the energy crisis

The role of Article 102 TFEU in a crisis scenario

## Article 102 TFEU and its national equivalents

- ... may even gain importance as legal basis for sanctioning abusive practices particularly in scarcity situations as far as non-regulated markets are concerned (*eg withholding of capacities leading to higher prices*)
- ... will lose in significance to the extent market behaviour is or becomes subject to sector-specific ex ante control (*eg utilisation of grids, storage facilities...*)
- ... is not to be applied as policy instrument to enforce or incentivise investments in existing or new infrastructures (*"strategic underinvestment"?*)

# The function of competition law in the energy crisis

How to draw the line between violations of 101 TFEU and permissible cooperation to mitigate the effects of the crisis?

**ECN Test:** A measure is likely to be compatible with Article 101 TFEU if it is:

- 1) Strictly necessary,
- 2) Limited in time,
- 3) Aimed at avoiding severe disruptions in the internal market caused by the effects of the war/sanctions in the Internal Market.

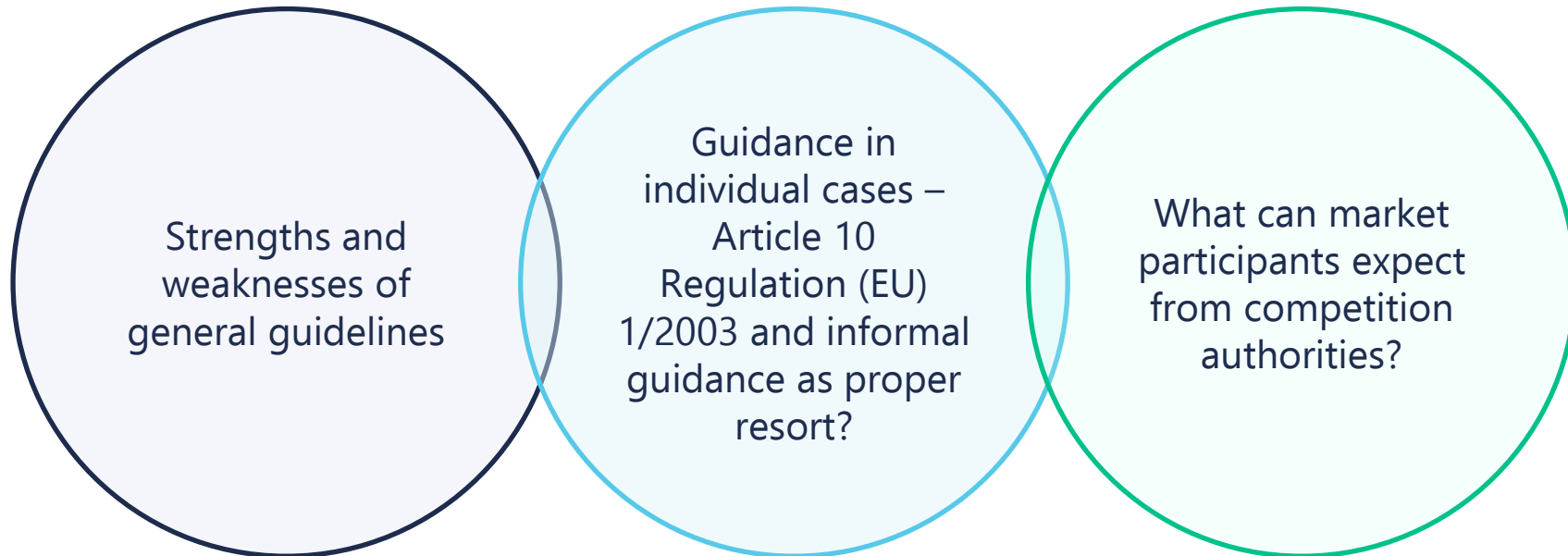
## Five general considerations for discussion:

- 1 There is no need to redefine what constitutes a restriction of competition under Article 101(1) TFEU in a crisis scenario.
- 2 Measures necessary and targeted to avoid or overcome disruptions caused by the war or sanctions are unlikely to qualify for a restriction by object.
- 3 Measures necessary and targeted to avoid or overcome disruptions caused by the war or sanctions are presumed to bring about a fair share of efficiencies for consumers.
- 4 Duration of measures as such should not be a relevant parameter to the extent measures are necessary to overcome the crisis.
- 5 Measures necessary and targeted to avoid or overcome disruptions caused by the war or sanctions which, at the same time, contribute to decarbonization are subject to the parameters developed for sustainability agreements.

# The function of competition law in the energy crisis

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How to provide guidance to market participants?





# Thank you

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