

6 May 2022

EFET response to ARERA consultation 133/2022 on the implementation of the clawback mechanism

The European Federation of Energy Traders (EFET) welcomes the opportunity to provide comments to ARERA consultation 133/2022/R/eel on the implementation of Article 15-bis of the Decree-Law of 27 January 2022, n. 4, regarding interventions on electricity produced by renewable power plants.

We recall that we advise against implementation of inframarginal power generation revenue clawbacks affecting wholesale price formation: the design of such mechanisms as we have seen to date can perversely **disincentivise the use of renewable and low-carbon electricity production, undermine the PPA market, and incentivise electricity production from carbon-heavier installations** for those who can optimise a portfolio across different technologies.

This would have a direct upward effect on greenhouse gas emissions and wholesale electricity prices. It will also strongly damage investor confidence and reduce the speed at which we diversify supplies.

Key messages

1. The [REPower EU Communication](#) guidance on the application of infra-marginal profit fiscal measures states that any measure should be temporary and not go beyond 30 June 2022
2. ARERA should comply with the provisions of paragraph 1 of Art. 15-bis of the Legislative Decree 4/22 without expanding the scope of its application, hence not including partially incentivized plants entered into operation before 1 January 2010 (for the portion of the energy introduced not subject to the incentive) in the scope of the clawback
3. Ex-ante attribution of hedging contract volumes to programmable power plants should not be imposed to market participants
4. Attribution of the energy volumes sold through hedging contracts to single power plants should be done through a pro-rata mechanism considering the actual energy produced and injected or through an equivalent allocation method, however left to the choice of the market operator in order to better reflect the functioning and the logic of hedging strategies
5. Allow market participants to calculate and made available their financial position on an annual or monthly basis to the GSE

Detailed comments

S. 1 Si ritiene che siano sufficientemente puntualizzati i contenuti minimi della dichiarazione di cui all'articolo 15-bis, comma 2, del decreto-legge 4/22? Quali altri elementi o specifiche è utile che siano inseriti? Perché?

For the purpose of the implementation of this mechanism, the analysis of forward energy contracts concluded with a portfolio logic and, in particular, the methods used to associate the volumes underlying these contracts to the individual plants must necessarily reflect the ways in which market participants define their hedging strategies at the portfolio level.

As stated under paragraph 3.4.a, in cases of several contracts per portfolio and in the absence of specific information, ARERA deems appropriate to assume that each of the contracts relates pro quota to each power plant.

However, we would like to reiterate that, in defining their policy to cover the estimated production, market participants in many cases act with a portfolio logic, so forward sales are often not referred to individual production plants.

General remarks on hedging

The hedging policies of the energy sector are, in fact, typically managed by dedicated units, which deal with all energy management activities. The energy management unit aggregates the productions into homogeneous portfolios in terms of price risk (typically all renewables, produced from wind, hydroelectric or photovoltaic sources, which are exposed to the volatility risk of the absolute value of the PUN). These productions, aggregated into a single portfolio, are sold in the two years prior to delivery, through Baseload Calendar / Month forward sales.

Through these sales, these productions are no more exposed to price risk but become exposed to the volume risk related to uncertain production forecast. By signing a forward sales contract, the market participant would be obliged to buy on the spot energy market the volumes needed to satisfy its sale commitment, if missing.

In defining the volumes to be hedged, the offsetting effects linked to the production profiles of the various technologies in the portfolio and to the production levels in the different hourly periods covered by the contract are therefore taken into consideration.

This would make any attempt to impose a specific allocation method (for example imposing an ex-ante criteria) of the volumes covered by the hedging contracts to single power plants eventually inconsistent with the hedging strategy adopted and could lead to underestimation of the hedging effects of such contracts.

Thus, to consider the effects of forward sales made to manage market participants' exposure, **it would be appropriate for the quantification of the economic effects of the two-way mechanism to compare the total energy produced and injected by the portfolio of power plants, ideally over an annual or monthly period, and the total volumes of forward sales made in the same period.** This solution should, therefore, be taken into due consideration by ARERA in defining its guidelines on the implementation of art. 15-bis of the decree-law n. 4/22.

EFET proposes that market participants whose electricity has been sold on a forward basis as part of portfolio contracts must limit the information in the declaration, with regard to point a) of paragraph 3.4 of this consultation, to the following items:

1. the presence of such contracts not related to spot market prices
2. the total contracted volumes for the entire portfolio (at group level if relevant) of RES plants that fall within the scope of application of art. 15-bis of the decree-law 4/22

The reference price(s) of the contracts can therefore be calculated with reference to the entire portfolio of the company holding the hedging contracts, defined as indicated above. In particular, the average price referred to in point e) of paragraph 3.4. it will be calculated by the market participant if average energy sale prices (unrelated to spot energy prices) result 10% higher than the reference price of one or more bidding zones where plants included in the considered portfolio are located. Market participants whose power plants belong to the same portfolio will therefore be able to make an identical declaration.

The association of the contracted volumes to the individual plants will instead be carried out through a **pro-rata mechanism**, on the basis of the electricity produced and injected into the grid by each plant included in the portfolio at the time of the financial settlement or through an equivalent allocation method.

Furthermore, EFET shares the possibility, provided for in paragraph 3.7 of the consultation, to include in the declaration several production plants managed by the same market participant, if there are contracts shared between several plants or made on a portfolio basis.

The declaration of each market participant should then be accompanied by the technical report drawn up by the company that concluded the contracts which will illustrate:

- the structures of the contracts considered
- the methods for the calculation of the average energy sale price defined in the contracts

- the method used to share the contracted volumes among the plants included in the portfolio.

As already pointed out, with regard to the average electricity sale price defined in the contracts not linked to the spot market prices, EFET believes that ARERA should maintain the possibility of choosing between the two methodologies proposed in the letter c) of paragraph 3.4, namely:

1. The definition of an average price for the sale of electricity for each individual contract
2. The definition of a single average price for the sale of electricity for the set of contracts encompassing the energy injected from the production plant

S.2 Si ritiene sufficiente la tempistica di 30 giorni per la predisposizione della dichiarazione?

No comment.

S.3 Si ritiene che siano sufficientemente puntualizzati gli elementi per identificare la quota di energia elettrica immessa nel periodo 1 febbraio 2022 – 31 dicembre 2022, per la quale l'articolo 15-bis del decreto-legge 4/22 trova concreta applicazione? Quali altri elementi o specifiche è utile che siano riportati? Perché?

No comment.

S.4 Si ritengono necessarie altre puntualizzazioni in merito alla quantificazione delle partite economiche oggetto di regolazione con il GSE, nonché alle relative tempistiche e modalità di applicazione? Quali e perché?

It is important that the financial settlement of the mechanism is carried out for the market participant and not for individual plant and that the GSE can compensate with other financial flows regarding the same market participant, as indicated in the consultation.

S.5 Si ritiene preferibile prevedere che, almeno nei casi più complessi caratterizzati dalla presenza di contratti articolati, il calcolo delle partite economiche sia effettuato dai produttori e reso disponibile, con cadenza mensile, al GSE per proprie verifiche?

In the presence of portfolios, it is necessary that the attribution of the energy volumes sold through hedging contracts to single power plants should be done pro-quota considering the actual energy produced and injected, or through an equivalent allocation method,

however left to the choice of the market operator, in order to better reflect the hedging effect of the forward sales made by market participants.

In order to avoid an operational burden for the GSE and to guarantee smooth financial settlement procedures, we support that the calculation of financial flows is carried out by the market participants themselves and made available to the GSE, on a monthly or annual basis.

Additional comments

Paragraph 2.3 of the consultation argues about possible information requests by Terna to the “*Utente del Dispacciamento*” (UdD or BRP): we stress that the owner of the information about the plant is the producer. In this respect, the producer should be considered the only responsible party for the correctness of the data.