# **HANDOUT**

**Case Study : Energy Crisis Response in the EU: Navigating the Perfect Storm**

1: **Introduction**

The invasion of Ukraine by Russia in 2022 triggered an energy crisis in Europe, leading to soaring prices and supply disruptions. Despite these challenges, the EU (and the member States[[1]](#footnote-1)), responded by accelerating the clean energy transition and reducing dependence on Russian fossil fuels.

**Commission** : ‘*The options for dealing with the impact of increased energy prices on our citizens and business, presented in this paper cover emergency time -bound interventions to limit the rise of energy prices, which should not jeopardise the long term objectives of the Green Deal, nor the functioning of the Single Market None of them is a silver bullet and all of them carry advantages and drawbacks’*.

* Read the [Communication on Energy Prices](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0138) : What is the origin and the purpose of the so-called toolbox of measures to tackle exceptional situation ?

2: **The EU's Response**

The EU launched the [REPowerEU](https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/european-green-deal/repowereu-affordable-secure-and-sustainable-energy-europe_en) strategy to promote renewable energy sources and increase energy efficiency measures. Member states revised renewable energy targets, leading to a significant increase in solar generation and a reduction in gas consumption. The shift towards LNG imports helped offset the shortfall from Russian supplies.

* What is [the REPowerEU](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52022DC0230) plan, how is it financed and what was its effect ? How do you assess it as an emergency tactical (short-term) measure ? (*see* also [REPowerEU-2 years on](https://energy.ec.europa.eu/topics/markets-and-consumers/actions-and-measures-energy-prices/repowereu-2-years_en))
* What are the recent landmark initiatives on measures to increase renewable energy capacity, improve energy efficiency, and modernize energy infrastructure ?

**Example**: The crisis prompted the European Commission to revise and strengthen the [Renewable Energy Directive (RED](https://energy.ec.europa.eu/topics/renewable-energy/renewable-energy-directive-targets-and-rules/renewable-energy-directive_en)) and the [Energy Efficiency Directive (EED](https://energy.ec.europa.eu/topics/energy-efficiency/energy-efficiency-targets-directive-and-rules/energy-efficiency-directive_en)). These directives set binding targets for renewable energy use and energy efficiency improvements in the EU member states. Additionally, the Commission introduced carbon pricing mechanisms, such as the EU [Emissions Trading System (ETS),](https://climate.ec.europa.eu/eu-action/eu-emissions-trading-system-eu-ets_en) to incentivize emissions reductions.

* How do you assess those as structural (long-term) initiatives ?

3: **Challenges and Lessons Learned**

The crisis highlighted the importance of policy interventions and price signals in changing consumer behaviour. Challenges such as unintended consequences of national support measures and the risk of increased fossil fuel subsidies were addressed. Lessons included the need for targeted and socially just support measures and European governance of fiscal policies.

* Read the EPRS (Mario Damen) report ‘[Four challenges of the energy crisis’](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/747099/EPRS_BRI%282023%29747099_EN.pdf). What is the concept of EU strategic autonomy?

4: **Evolution of Climate and Energy Governance**

The Energy Union and [European Green Deal](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52019DC0640) played critical roles in strengthening energy-climate policies[[2]](#footnote-2). The framework focused on energy security, market integration, efficiency, emissions reduction, and research and innovation. On 24 December 2018, the Regulation (EU) 2018/1999 (Governance Regulation) entered into force and introduced the [governance system of the Energy Union and Climate Action](https://climate.ec.europa.eu/eu-action/climate-strategies-targets/governance-energy-union-and-climate-action_en). The Governance Regulation provides the European Union with a new regulatory regime for renewable energies and energy efficiency. It is deemed an ‘Umbrella Regulation’ aiming at the alignment of energy and climate policies for the period 2021 to 2030. Its target is to implement the climate protection goals of the Paris Agreement. It has been noted that the Governance Regulation represents a compromise and compensation for the EU’s lack of competences in the area of energy supply, especially concerning the determination of the energy mix of the Member States.

* It is argued that despite the choice of a directly applicable act (Regulation), its steering and sanctioning mechanisms are in this respect rather ‘soft’: The Regulation gives the Member States a wide scope of decision-making. Do you agree ? Provide your answer taking into consideration the Communication from the Commission ([COM(2019) 285 final)](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:52019DC0285) and the good practice examples provided therein.
* What are the components of the governance mechanism of the Energy Union ? What are the challenges for each ? Is this mechanism (as a long-term planning governance model) suited for directly addressing emergency situations?

**Elements for answer :**

1. **Crisis Response Coordination**: Although not explicitly designed for emergencies, the Energy Union encourages coordination among Member States. This coordination could extend to crisis response efforts. For example, cross-border energy cooperation can help ensure energy security during emergencies.
2. **Flexibility and Adaptability**: The governance mechanism emphasizes adaptability allowing for adjustments based on changing circumstances. During emergencies (such as supply disruptions), Member States can modify their plans to address immediate needs.
3. **Emergency Resilience Measures**: The governance mechanism includes provisions for energy security and resilience. Member States’ [National Energy and Climate Plans](https://commission.europa.eu/energy-climate-change-environment/implementation-eu-countries/energy-and-climate-governance-and-reporting/national-energy-and-climate-plans_en) address energy infrastructure, diversification, and risk management. These measures indirectly contribute to emergency preparedness.
4. **Transparency and Information Sharing**: Transparency is crucial during emergencies. The governance process involves reporting and monitoring, which can facilitate information sharing. Timely data exchange can aid decision-making during crises.

However, there are certain limitations :

* **Time Horizon**: The Energy Union’s focus on 2030 and beyond may not align perfectly with immediate emergency response. Short-term crises require rapid actions, whereas the governance mechanism emphasizes longer-term planning cycles.
* **Emergency-Specific Mechanisms**: The Energy Union lacks specific mechanisms tailored exclusively for emergencies. Existing structures may need adaptation to handle acute situations effectively.

5: **Strengthening the Single Market**

The crisis tested the resilience of the [Single Market](https://single-market-economy.ec.europa.eu/news/updating-2020-industrial-strategy-towards-stronger-single-market-europes-recovery-2021-05-05_en), leading to central coordination of national energy policies and regulatory reforms. Price signals influenced consumer behaviour and investments in LNG infrastructure. Strengthening mutual trust among Member States and fostering regional cooperation are essential for optimizing the integrated energy market's potential.

* Read the [Leta Report](https://www.consilium.europa.eu/media/ny3j24sm/much-more-than-a-market-report-by-enrico-letta.pdf), especially at p. 61 sqq: How is the link among SEM and efficiency energy policies established :

6: **Enhancing Energy Resilience**

Europe must diversify energy sources, invest in clean technologies, and strengthen cybersecurity measures to fortify its energy infrastructure. Strategic reviews of the gas security framework and investments in critical materials are imperative. Coordinated market integration and policy measures are essential for a secure, sustainable energy future. Enhancing the energy resilience is a goal articulated before the energy crisis, through the adoption of a temporary instrument for the economic recovery from the coronavirus pandemic.

* Read the Recovery and Resilience Facility (RRF) – the temporary instrument  that is the centrepiece of  [NextGenerationEU](https://commission.europa.eu/strategy-and-policy/eu-budget/eu-borrower-investor-relations/nextgenerationeu_en) (NGEU) -the EU’s plan to emerge stronger and more resilient from the pandemic crisis. Observe how the RRF is being implemented (see the [Recovery and Resilience scoreboard](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/index.html)). How is the RRF is also crucial for implementing the REPowerEU plan ?
* Assess the view of [Leino-Sandberg and Ruffert](https://kluwerlawonline.com/journalarticle/Common%2BMarket%2BLaw%2BReview/59.2/COLA2022031) that the NGEU, although explained as exceptional and justified (with reference to the pandemic), is not a crisis measure and it is establishing an anti-constitutional super competence of the EU.

7: **Energy Prices and Security of Supply : Art 122 measures**

Emergency measures focused on diversifying supplies and enhancing gas storage reserves to ensure energy resilience. EU countries swiftly transitioned away from Russian fossil fuels and increased energy autonomy following the crisis.

The European Commission was initially reluctant to interfere : Action to constrain energy prices could hinder progress to its climate goals, including achieving net zero emissions by 2050). However, the implementation of [Article 122](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012E122) legislative measures and the joint efforts of the EU member states yielded positive results, with a significant decrease in gas prices towards the end of 2022 and stable prices throughout 2023. The EU successfully reduced its dependence on Russian gas, with the share of Russian gas imports dropping from 45-50% to 15%. Energy demand was also curtailed, with a notable 18% reduction in gas consumption compared to previous years.

**Example of ‘emergency’ acts: A)** Council Regulation (EU) 2022/1369 of 5 August 2022on the coordinated demand-reduction measures for gas ([**Gas Demand-Reduction Regulation**](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1369))

 **B)** Council Regulation (EU) 2022/1854 of 6 October 2022on an emergency intervention to address high energy prices ([**Emergency Intervention Regulation**](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32022R1854) **-**

The most controversial Art 122 measure has been the **Emergency Intervention Regulation.** This Regulation introduces price controls by putting a cap on the revenues of electricity producers and requires Member States to redistribute the resulting surplus revenues among final electricity customers. Fossil fuel companies are for their part subject to an excessive profit tax. Several Member States have expressed concerns with respect to its legal basis (*see how the measure has been challenged below*)..

* Summarise and present the [concerns of member states](https://data.consilium.europa.eu/doc/document/CM-4715-2022-INIT/en/pdf) on an emergency intervention to address high energy prices.

**Example** :

 **Hungary** expressed its concerns about regulation 2022/1854: “*The Hungarian delegation expresses its reservation on the choice of the legal basis of this Regulation, as article 122 of the TFEU cannot be the sole legal basis for the solidarity contribution, which includes provisions of a fiscal nature, that should be discussed and adopted accordingly with unanimity*.

 **Poland** also disputes the legal basis of the Regulation: “*The Republic of Poland takes the view that, during the negotiations in the Council of the EU on the draft Council Regulation on an emergency intervention to address high energy prices, the European Commission failed to provide sufficient justification for its conclusion that its proposed new measures, and in particular the ‘solidarity levy’, did not constitute measures of a fiscal nature*”. In essence Poland argues that instead of Article 122, Article 192(2) TFEU ought to have been relied on because the gas demand-reduction measures significantly affect Member States’ choice between different energy sources and the general structure of their energy supply.

**Comment - case study : Art 122 as a Legal Basis for Energy Emergency Measures**:

Article 122 TFEU provides a legal basis for the EU to adopt legislative measures in response to circumstances threatening the economic stability of member states. While Article 122 has been primarily used in the context of financial assistance during economic crises, its application to energy-related measures has been subject to debate and legal scrutiny.

One notable case involving the use of Article 122 has been the "[Pringle case" (C-370/12)](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62012CJ0370). In this case, the Court of Justice of the European Union (CJEU) addressed the legality of the European Stability Mechanism (ESM), an intergovernmental treaty establishing a permanent stability mechanism for the euro area. The CJEU clarified that Article 122 could only be invoked in situations of exceptional economic circumstances, such as natural disasters or external shocks, which directly threaten the financial stability of one or more member states.

The Court emphasized that Article 122 cannot be used as a general legal basis for establishing permanent mechanisms or for measures unrelated to the stability of the euro area. Several EU Member States have expressed concerns on the legal basis for energy emergency regulations.

Overall, while Article 122 provides a legal basis for EU action in response to economic crises, its application to energy-related measures may be limited and subject to interpretation by the CJEU based on the specific circumstances of each case and the principles of EU law.

* Look at the recently adopted [electricity market design](https://energy.ec.europa.eu/topics/markets-and-consumers/market-legislation/electricity-market-design_en) legal framework : Can you identify where the elements of emergency regulations has been incorporated into ordinary legislation ? What are the consequences for the legitimacy of the emergency measures?

**Elements for an answer** : Consider an other emergency measure measure : On 30 December 2022, [**Council Regulation (EU) 2022/2576**](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32022R2576) “Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders” entered into force. The Regulation tasks ACER with producing and publishing (a) A new [daily Liquefied Natural Gas (LNG) price assessment](https://www.bing.com/search?pglt=43&q=Court+Anagnostakis+case%2C&cvid=1d2ca08173b545d8abc797c5970c7777&gs_lcrp=EgZjaHJvbWUyBggAEEUYOTIGCAEQABhAMggIAhDpBxj8VdIBCDM5NDBqMGoxqAIAsAIA&FORM=ANNAB1&PC=U531&ntref=1) and (b) a daily [LNG benchmark](https://www.acer.europa.eu/news-and-events/news/acers-first-new-daily-lng-price-assessment-report-published).

Following the electricity market design reform, the daily LNG benchmark competences of ACER have been incorporated in the revised REMIT (adopted via the ordinary legislative process). (Consider Article 7 ot the [revised REMIT](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401106)).

**CASES**

* Case [C-675/22](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:62022CN0675): Action brought on 2 November 2022 — Poland v Council, OJ 2023 C 7/18;
* Case [T-759/22](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0759): Action brought on 2 December 2022 — Electrawinds Shabla South EAD v Council, OJ 2023 C 71/32;
* Case [T-775/22](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0775): Action brought on 12 December 2022 — TJ e.a. v Council, OJ 2023 C 54/19;
* Case [T-802/22](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0802): Action brought on 28 December 2022 — ExxonMobil v Council, OJ 2023 C 54/23;
* Case [T-795/22](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0795): Action brought on 20 December 2022 — TV and TW v Council, OJ 2023 C 54/20;
* Case [T-803/22](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0803): Action brought on 30 December 2022 — TZ v Council, OJ 2023 C 63/64.
* Do you think the recourse by the Council to Article 122 TFEU to address the energy crisis and the economic downturn caused by the pandemic is legally justified ? How is the argument of fiscal measures used ?
* Look at the arguments of the Court in [Anagnostakis](https://curia.europa.eu/juris/document/document_print.jsf?mode=lst&pageIndex=0&docid=130381&part=1&doclang=EN&text=&dir=&occ=first&cid=825742) case, at 70, and comment on the restrictive approach of the court on the application of Art. 122 : What arguments could be brought by the member states against the Art. 122 measures in this case ?
* How does [Electrawinds](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:62022TN0759) express this concern? (Look at the first plea).
* Do you think that the challenges brought by private entities are admissible ?
* Study the arguments of the case brought by Poland against the [**Gas Demand-Reduction Regulation**](https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32022R1369)). Do you agree with the view that Poland is not raising the fundamental question of the limits to Article 122 TFEU in order to challenge the competence of the EU but, instead, its main plea is that Article 192(2)(c) TFEU ought to have been used as a legal basis ?

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* IEA (2023), [Europe’s energy crisis: Understanding the drivers of the fall in electricity demand](https://www.iea.org/commentaries/europe-s-energy-crisis-understanding-the-drivers-of-the-fall-in-electricity-demand), IEA, Paris
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2. EC. (2019a). The European green deal [↑](#footnote-ref-2)
3. Brussels, 24.10.2023, COM(2023) 650 final. [↑](#footnote-ref-3)