

Application to the Italian case of the EC's "Guidance on the application of infra-marginal profit fiscal measures"

<i>Subject</i>	<i>Provision of Annex II of EC's Communication</i>	<i>Comments on the Italian case</i> (<i>green : criteria met / red : criteria not met</i>)
<i>Duration</i>	The duration of the measure should be limited and tied to a specific crisis situation.	Winter 2022 (from 01 10 2021 till 31 03 2022) vs Winter 21 (01 10 2020 – 31 03 2021).
<i>Impact on price formation</i>	The measure should not affect the formation of wholesale electricity prices based on marginal costs expressed by the merit curve, hence preserving the efficiency of price signals for short-term operational decisions. In case of any doubt, lower levels of excess gains should be clawed back to avoid impacts on price formation.	Considering the taxable basis and its timing the measure does not impact the wholesale prices.
<i>Long-term price signals</i>	Long-term price trends resulting from structural market developments and the carbon price signal from the EU ETS should not be affected. This is so as not to interfere with long-term price signals that contribute to the coverage of fixed and investment costs, incentivizing investments in capacity needed for a decarbonized and reliable power system.	The current proposal fails to acknowledge its impact on the capabilities of targeted companies to develop further investment projects in renewable projects.
<i>Structural component</i>	It has to be noted that some of the increase in global gas prices has a structural component (which could be defined on the basis of average prices over time). The tax should not deal with the effects of this structural component.	The 10% threshold does not allow to take into account the structural component since an undertaking exceeding the 10% increase is taxed on the whole increase without any deduction. In addition, there is no difference between an increase of the volume and an increase of the price, while the purpose of the law is to address only price increase.
<i>Method for the calculation of rents</i>	The method for the calculation of rents that are to be considered 'excessive' – linked to the specific crisis environment - and the trigger/deactivation mechanisms would have to be clearly specified and justified. To avoid any arbitrary use that would result in heavy distortions, the 'windfall profits' and the "trigger/deactivation" mechanism would have to be defined on the basis of objective and verifiable criteria and events. These could for example be the deviation from an average of global gas prices over a sustained period of time and the number of hours that gas sets the price in the electricity system. The duration of the tax should be also clearly limited in time, not going beyond 30 June 2022, on the basis of these well-defined criteria.	The current proposal used an objective criterion but not directly linked to additional profits that would have been generated by higher energy prices as it is using an inappropriate proxy for this purpose.

<i>Additional infra-marginal rents</i>	The additional infra-marginal rents should be clawed back only in the time periods when gas plants were marginal and to the extent that such additional infra-marginal rents were effectively earned by infra-marginal units.	The current proposal does not take into consideration the way the power is produced and the nature of the plant in the merit order. No link with infra-marginal units operating and nor with the hedging practices of the utilities. Therefore this criteria is not met.
<i>No distinction between different generation technologies</i>	The measure should not distinguish different generation technologies. It should include any infra-marginal units operating in the hours of application of the tax, e.g. infra-marginal rents from hard coal and lignite-fired generation, renewables (including hydropower) and nuclear.	Idem
<i>Support schemes</i>	The measure should equally apply to all generators regardless of whether they are covered by support schemes or capacity remuneration mechanisms. However, it should be taken into account that some support schemes by their nature already avoid (feed-in tariffs), capture (two-way contracts for difference contracted before the gas price crisis) or reduce (floating premiums) infra-marginal rents in periods of high prices. The specific situation of fixed premium could be addressed, which can increase infra-marginal rents.	This criteria is met.
<i>Retroactivity</i>	The measure should not be retroactive and should only claw back a share of profits that were actually made. Thus, it needs to take into account that generators may have sold part of their production forward at a lower price before the crisis began. Energy which has not profited from higher electricity market prices because it was already sold forward should be exempted from claw back measures.	This warning underlines the need to look at the actual business model of the energy company to limit the tax to genuine windfall profits. By excluding from the computation of the taxable basis the financial hedges (swaps, futures ...) of an operator, there might be a significant distortion between the actual profits of the company and the deemed windfall profits assessed by the new law.
<i>Revenues</i>	Revenue from the measure should be passed on to households or in non-selective and transparent measures supporting all final consumers (e.g. an explicit separate discount on electricity bills of final customers proportional to their average daily or weekly consumption).	It is the objective of the measure.