

**COMPLAINT FORM PART 2/2  
TO THE EFTA SURVEILLANCE AUTHORITY CONCERNING  
FAILURE TO COMPLY WITH EEA LAW**

**N.B. Both complaint form part 1/2 and complaint form part 2/2 must be filled out and sent to the EFTA Surveillance Authority as two separate documents.**

*All starred (\*) questions must be answered and the rest should be completed to the best of your ability.*

Complaint forms can be sent by email to [registry@eftasurv.int](mailto:registry@eftasurv.int)

Alternatively, complaint forms may be sent by post to:

EFTA Surveillance Authority  
Avenue des Arts 19H  
1000 Brussels  
Belgium

*To be admissible, a complaint must relate to an alleged infringement of EEA law by an EEA EFTA State, i.e. Iceland, Liechtenstein or Norway.*

**7. EEA EFTA State:\***

- ☐ Iceland
- ☐ Liechtenstein
- ☒ Norway

**and, if applicable, public body alleged by the complainant not to have complied with EEA law:**

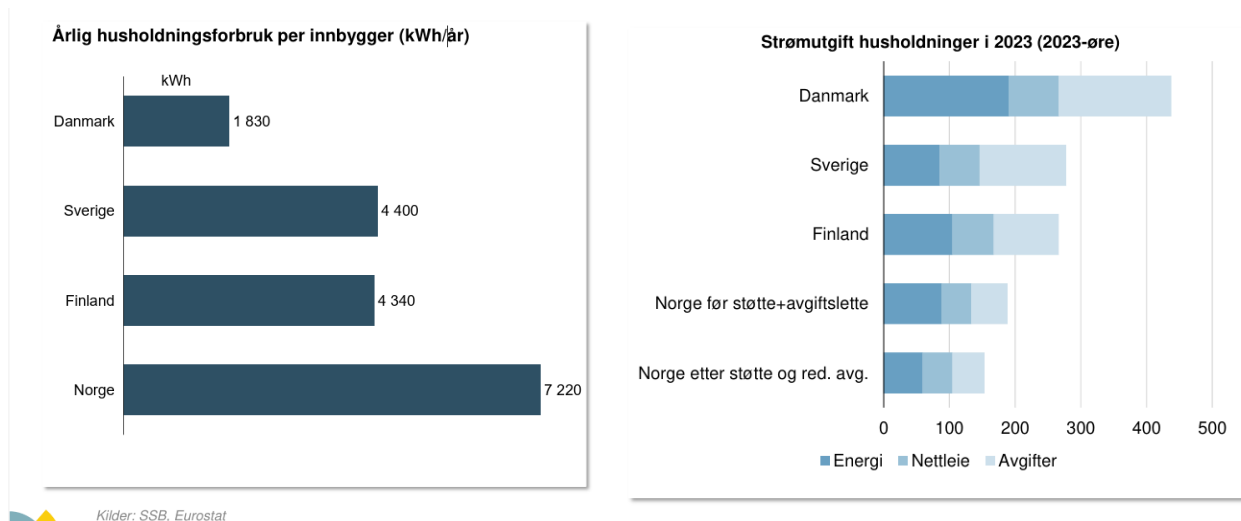
The complaint relates to a legal act adopted by the Norwegian Parliament, Norway Price for electricity.

**8. Fullest possible account of the facts giving rise to the complaint:\***

In the following, we will provide a brief account of the relevant factual background. The following is meant to be read in conjunction with the enclosed documents. Please do not hesitate to request a more detailed description of relevant facts should that be conducive to your investigation.

Introduction

Norway is one of the world's most electrified countries. Compared with other countries in Scandinavia, households consume more and pay less for electricity.



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Figure 1. Electricity consumption and prices in the Nordic countries

As the above also illustrates, Norway and its households are highly dependent on electricity as an energy source. The total annual end use of electricity in Norway was 117 TWh in 2024 of which private households consumed 39 TWh (33 percent)<sup>2</sup>. **Households thus account for approximately a third of Norway's total electricity consumption.**

In 2023, the average total energy consumption per household was around 18,900 kWh. Electricity accounted for 15,700 kWh, which is about **83% of their total energy consumption**. The electricity dependency of households in the EU is significantly lower, at about 25% on average.<sup>3</sup>

There is one main reason for this electricity dependency: Norwegian households rely chiefly on electricity for heating. A staggering **two thirds of all electricity consumed in households is used for heating purposes**<sup>4</sup>, approximately 12% for hot water<sup>5</sup> and approximately 4% for charging of electric cars<sup>6</sup>.

That such a large share of the total electricity consumption comes from households is a critical element of background to bear in mind for the assessment this complaint, as it distinguishes the Norwegian market from any other European country. As we will revert to below, **fixing the price of electricity here has accordingly profound effects, and more so as would have been the case elsewhere.**

Norway has long been a pioneer in liberalising and opening up electricity markets to competition. In fact, the country introduced market-based reforms even before similar liberalisation efforts were launched through successive rounds of EU legislation.

Norway was also an early mover in deploying Advanced Metering Systems (AMS) with hourly measurement capabilities—an infrastructure investment of over NOK 10 billion. This system was

<sup>1</sup> Attachment III, pages 3 and 26.

<sup>2</sup> Statistics Norway (2024) <https://www.ssb.no/statbank/table/11561>

<sup>3</sup> Statistics Norway (2022) <https://www.ssb.no/energi-og-industri/energi/artikler/varmepumper-reduserer-utgiftene-til-stromavhengige-nordmenn>.

<sup>4</sup> NVE (2024) <https://www.nve.no/energi/energisystem/energibruk/energibruk-i-bygg/>.

<sup>5</sup> NVE (2024) <https://www.nve.no/energi/energisystem/energibruk/energibruk-i-bygg/>.

<sup>6</sup> Statistics Norway (2023) <https://www.ssb.no/energi-og-industri/energi/statistikk/produksjon-og-forbruk-av-energi-energibalanse-og-energiregnskap/artikler/lavere-stromforbruk-men-mer-bruk-av-ved-i-2022>.

intended to enable consumers to respond to real-time electricity prices and support a more efficient energy market. Recent research illustrates that households do respond to hourly price signals – reducing their electricity consumption with approximately 3% during times of high electricity prices<sup>7</sup>. In the future, this responsiveness is expected to increase as more households invest in smart energy management systems for electric vehicle charging, water heating, and other flexible loads. Liberalised, competitive electricity markets have served Norwegians well and led among other things to a retail electricity market where approximately 100 electricity suppliers compete. The competitive process and the AMS have resulted in the development of world-leading innovative services to monitor and steer electricity consumption, reducing electricity bills and pressure on the grid.

In recent years, this well-functioning, competitive market has become increasingly under threat by regulatory intervention, including in particular the Norway Price for electricity, which the present complaint relates to. Before turning to this scheme and its effects, a few more elements of factual background are presented which seem of particular relevance for the legal analysis.

### The retail market for electricity in Norway

Household customers in Norway are free to choose their electricity supplier, and there is competition among them, with more than 100 different electricity suppliers operating nationwide.

End users can (in principle) choose between three main types of electricity contracts: fixed price, standard variable price and spot price (based on market prices, with a mark-up).

Spot price contracts are by far the most common contract type for all categories of end users, except for power-intensive industries, for which fixed price contracts are more common. For households, **spot price contracts covered 94.9% of electricity consumption** in Q3/2024.<sup>8</sup>

As regards spot price contracts, electricity suppliers buy electricity at the spot price in the wholesale market and sell it at the same price to end users but include an add-on fee which covers the electricity suppliers' operating costs.

Competition between electricity suppliers for end users is mainly based on price, i.e. the size of the add-on fee, but increasingly also innovative additional services such as apps that help monitor and manage electricity consumption. Indeed, it is cost-saving for households with spot-price contracts to move their consumption to periods with (low) electricity prices, which these new services enable.

The **prevalence of spot-price contracts makes households particularly perceptible to respond to market signals**, i.e. changes in electricity prices. This is in contrast to the consumption of industry, which is relatively stable throughout days and the year.<sup>9</sup>

In short, Norwegian households consume a large amount and share of electricity, which hitherto was directly exposed to price signals, and responded to them. With Norway Price, a large share of up to 39 TWh consumption will be entirely shielded from market developments.

### Norway Price for electricity

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<sup>7</sup> Hofmann, Lindberg, Evidence of households' demand flexibility in response to variable hourly electricity prices – Results from a comprehensive field experiment in Norway

<https://www.sciencedirect.com/science/article/pii/S0301421523004068#abs0010>

<sup>8</sup> Statistics Norway (2024) <https://www.ssb.no/en/energi-og-industri/energi/statistikk/elektrisitetspriser/article-for-electricity-prices/lower-electricity-price>.

<sup>9</sup> Attachment III, page 16.

On 31 January 2025, the Norwegian government proposed to introduce **Norway Price – a fixed price scheme for electricity of NOK 0.40 per kWh from 1 October 2025**. The proposal was sent for public consultation on 10 March 2025.<sup>10</sup> On 31 March, the government also proposed introducing the Norway Price for households that use district heating. On 23 May, the government adopted a formal legislative proposal<sup>11</sup> for the introduction of Norway Price for both electricity and district heating (the legislative proposal). The proposal was adopted by the Norwegian parliament on 20 June 2025.

The regulation of Norway Price is contained in the Norwegian act on Norway Price and electricity subsidies for households (Nw: "[lov om Norgespris og strømstønad til husholdninger](#)") (LOV-2025-06-20-44) (**the Act**), which was announced 20 June 2025. The legislative proposal is contained in [Prop. 148 L \(2024–2025\)](#). The Act also covers the existing electricity subsidy scheme.

Norway Price is a voluntary alternative to the current electricity subsidy scheme offered to all households and holiday homes.

The price is set based on historical average prices and expected prices but is expected to be (significantly) below market prices in Southern Norway. The Act does not establish a clear and transparent method for how the price will be determined after 31 December 2026.

The government expects that the scheme will entail public expenditure of approximately NOK 6.6 billion (and NOK 370 million for district heating) for 2026. This estimate is inter alia based on an assumption that 70% of household in Southern Norway will choose Norway Price in 2026. All analyses show that for nearly all households in Southern Norway, choosing the Norway Price would be the economically rational choice.

The local distribution system operators (**DSOs**) and district heating companies **will administer the scheme** and be the contracting parties to the customers choosing Norway Price. DSOs will be responsible for settling the accounts of their Norway Price customers. DSO will refund customers the delta to Norway price if market prices are above Norway Price, and invoice the delta if market prices are below Norway Price. No compensation to DSOs is provided for in the legislative proposal, such that the administrative expenses the scheme entails for DSOs will have to be financed by network levies. This means that all electricity customers must cover the administrative costs of Norway Price—even those who are not offered it, such as businesses, industry, and Norwegian municipalities, and those not opting for it.

The scheme is meant to have a duration until 31 December 2029.

According to Parliament's decision of 20 June 2025, and as illustrated by a Q&A dated 26 June 2025,<sup>12</sup> the following monthly consumption caps will be used:

- Electricity for households: 5000 kWh
- District heating for households: 4500 kWh
- Electricity and district heating for holiday homes: 1000 kWh

According to an analysis made med THEMA Consulting,<sup>13</sup> the consumption "cap" of 5000 kWh will in practice mean that only 4% of households may at some point in the course of a year have electricity

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<sup>10</sup> <https://www.regjeringen.no/no/dokumenter/horing-av-forslag-til-ny-lov-om-norgespris-og-stromstonad-til-husholdninger/id3090841/>

<sup>11</sup> The government (2025) <https://www.regjeringen.no/no/dokumenter/prop.-148-l-20242025/id3102011/?epsremainingpath=id3102011%2f>.

<sup>12</sup> The Norwegian government (2025) <https://www.regjeringen.no/no/tema/energi/strom/sporsmal-og-svar-om-norgespris/id3089310/?expand=factbox3113092>.

<sup>13</sup> Report dated 18 March 2025, enclosed as Attachment II, page 11.

consumption above the cap. The electricity consumption above the cap will amount to ca. 0.3% of total electricity household consumption. In practice, this means that Norway Price will be the price households opting for it will pay, and that they will be de-linked from market prices and price signals.

This **fixed-price scheme for up to a third of Norway's electricity consumption** will in turn give rise to profound effects in the electricity market and adjacent markets, as the following indicates.

Note that the Norwegian Better Regulation Council (Nv. Regelrådet) has considered that legislative proposal was insufficiently evaluated, and should in particular also have considered alternative to Norway Price<sup>14</sup>. Shortly after the proposal was adopted, the Better Regulation Council was abolished.

### Likely effects of Norway Price

In the following, we focus on those effects which we consider to be of greatest relevance for the ensuing legal assessment.

The Ministry of Energy assesses the effects of Norway Price in section 5 of its consultation paper for the public consultation<sup>15</sup> and in section 3 of the legislative proposal.<sup>16</sup> By and large, it confirms that the scheme will indeed lead to higher consumption of electricity, higher prices at certain times, weakened incentives to save electricity (or move consumption), including investments in alternative heating solutions, as exemplified by the following statement:

*“The Ministry considers that Norway Price could reduce incentives to invest in heating solutions based on alternatives to electricity, including heat pumps, wood burning, wood chips and pellets, compared with the current electricity subsidy scheme. In winter, when electricity prices are typically high, the Norway Price will make alternative heating solutions less attractive relative to electric heating. It is difficult to estimate the extent to which the introduction of the Norway Price will affect the heating market.”<sup>17</sup>*

Generally speaking, the government acknowledges the presence of some of the scheme's negative effects but claims that those are difficult to assess and/or largely immaterial.

This view is in contrast with some of the most pertinent voices responding to the public consultation, including leading analysts, which have made plausible estimates of different consequences of the Norway Price.

**First**, it seems clear that the scheme will lead to increased consumption of electricity by Norwegian households. According to the THEMA report dated 18 March 2025, for example, consumption will rise by 1.2% in 2026, and by 7.4% in 2030 as compared with a scenario in which the scheme is not introduced.<sup>18</sup>

A support scheme where subsidies are not tied to actual electricity consumption would avoid the negative effects of encouraging increased household demand. Several actors have proposed such alternatives, yet these were not considered in the government's proposal<sup>19</sup>. This omission is one of the main reasons why the Better Regulation Council gave the Norway Price a red light.

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<sup>14</sup> <https://regelradet.no/2025/04/07/forslag-til-ny-lov-om-norgespris-og-stromstonad-til-husholdninger/>

<sup>15</sup> Ministry of Energy (2025)

<https://www.regjeringen.no/contentassets/428d4ed2a03f47de9cc333609ff18106/horingsnotat-ny-lov-om-norgespris-og-stromstonad-til-husholdninger.pdf>.

<sup>16</sup> Prop. 148 L (2024-2025) [https://lovdata.no/pro/forarbeid/prop-148-l-202425/KAPITTEL\\_3](https://lovdata.no/pro/forarbeid/prop-148-l-202425/KAPITTEL_3), chapter 3.

<sup>17</sup> DeepL machine translation of section 5.5.

<sup>18</sup> See for example page 20 of Attachment II.

<sup>19</sup> See for an overview Norsk Klimastiftelse (2025), <https://www.klimastiftelsen.no/publikasjoner/stromstotte-som-fordeling-av-grunnrente>

Higher electricity consumption by household customers **secondly** has certain inevitable effects. It will necessarily increase the market price (spot price) at times where it is higher than the Norway Price, because the existing incentive not to consume electricity (in such a situation) is significantly weakened. An estimate of this effect is contained on page 15 of the THEMA report dated 18 March 2025,<sup>20</sup> suggesting that market prices in Norway will increase by up to 3.7% in 2026, and 8.8% in 2030 as a result of the scheme, leading then to an increase of businesses' and municipalities' electricity expenses, that are not covered by the scheme. Similar concerns were also raised by the electricity exchange Nord Pool<sup>21</sup>.

Likewise, Norway Price will also lead to a significantly higher electricity market prices in neighboring countries (Denmark, Sweden, Finland). These potentially grave consequences appear to have motivated a number of authorities, associations and companies from neighboring countries to voice their concerns in the public consultation, testifying to the fact Norway Price's effects likely will be felt also outside of Norway.

By means of example, there were clear warnings from neighboring countries that Norway Price could disrupt competition and price formation in the integrated regional electricity market.

Three key Swedish bodies – Svenska kraftnät (system operator), Energiföretagen Sverige (industry organisation) and Energimarknadsinspektionen (regulator) – submitted consultation responses expressing considerable skepticism. They fear that Norway Price will lead to increased electricity consumption, higher and more volatile electricity prices in the Nordic market, operational challenges for the power system and a negative impact on the price hedging market (forward and fixed price contracts). In other words, if Norwegian households are shielded from price signals, the rest of the market must bear the burden. Svenska kraftnät pointed out that reduced demand flexibility in Norway during price peaks could lead to higher electricity prices in both Norway and Sweden and create challenges for system operation. Energimarknadsinspektionen shared this assessment and referred to previous experience that changes in one part of the Nordic region affect prices and electricity flows in the entire region.

The industry organisation Energiföretagen Sverige was particularly concerned about market disruptions outside Norway. In particular, they were skeptical of the Norwegian assessment that the measure would have a limited impact on the wholesale market. With increasingly unpredictable power generation (wind, solar), flexibility in consumption is becoming increasingly important; thus, they consider that removing price signals in a large part of the market *cannot* avoid significantly affecting wholesale prices, a view largely echoed by Green Power Denmark. Energiföretagen also highlighted that Statnett ought to have been tasked with analyzing the consequences for the electricity market of introducing Norway Price. In short, it seems clear that the Scandinavian wholesale market will be significantly affected by the scheme.

Higher electricity prices **thirdly** will entail higher income for electricity producers, in particular for hydro (reservoir) electricity producers, who can also produce when the market prices are high (or switch off production when market prices are low). Solar and wind might conversely only see marginal increases of their income, or might even see it being reduced.<sup>22</sup> Furthermore, it will become considerably less attractive for households to invest in their own energy or electricity supply, for example through installation of solar panels or heat pumps. This brings us to the fourth consequence.

**Fourth**, and as indicated above, households benefitting from Norway Price will no longer have an incentive to move consumption to periods when market prices are lower, and reduced incentives to

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<sup>20</sup> Attachment II.

<sup>21</sup> [https://energiwatch.no/nyheter/politikk\\_marked/article18220906.ece](https://energiwatch.no/nyheter/politikk_marked/article18220906.ece)

<sup>22</sup> Teknisk ukeblad (2025) <https://www.tu.no/artikler/norgespris-vil-gi-hoyere-spotpris-og-flere-13-kronerstimer/555459>.



save electricity. This will in turn negatively affect a range of sectors and technologies, such as manufacturers and suppliers of wood-burning stoves, bio energy, all types of heat pumps, solar panels and energy storage. Suppliers of smart energy technologies (control systems, electric car charging, water heaters, etc.) will also be negatively affected when the price incentives for electricity savings and consumer flexibility disappear for households and holiday homes. This effect is not contested by the government and is underlined by numerous respondents to the public consultation, and publications<sup>23</sup>. A pertinent example of these effects – Norway Price’s impact on wood producers and wood burning stoves – is analyzed by THEMA consulting.<sup>24</sup> In short, there is a clear correlation between wood used as a heating source, and electricity prices.<sup>25</sup>

Overall, it is both unusual and noteworthy that even public authorities such as the Norwegian Competition Authority, Statistics Norway (SSB), the Norwegian Water Resources and Energy Directorate (NVE) and the Norwegian Energy Regulatory Authority (NVE-RME) are so outspokenly critical of a government proposal, emphasizing also that a strong intervention into the market seems at this juncture simply unnecessary, as NVE points out in their response to the public consultation on the Norway price scheme:

*“As mentioned in the consultation paper, electricity costs for Norwegian households have fallen sharply over the past couple of years, and last year they were almost back to the levels of 2018 and 2019. It is worth noting that in parallel with the fall in the price of electricity, the support schemes for households have been steadily strengthened. In other words, **we are seeing a trend where increasingly powerful support schemes are being introduced to mitigate a problem that has become increasingly smaller.**”<sup>26</sup> (emphasis added)*

**Fifth**, one concern shared by many is that there are readily available alternatives that would sufficiently shield vulnerable consumers from high energy prices, such as direct transfers, but that those have not been assessed. As we will revert to under section 6, this lack of assessment has an important bearing on the proportionality assessment of the scheme. That being said, Norway Price will in any event benefit many more than just vulnerable households or customers. With the consumption cap at 5000 MW, only a fraction of both household and holiday home electricity consumption will not benefit from the scheme.<sup>27</sup> This means that even the wealthiest Norwegians will benefit from the scheme both as regards their primary homes as well as their holiday homes.

**Sixth**, and finally for the purposes of the present analysis, the proposed administration of the scheme has raised concerns as regards the role of distribution system operators (**DSOs**). Norway Price entails that the DSOs’ role will be expanded beyond network operations, increasing direct customer contact and administrative burden, and hence blurs the line between the roles of DSOs and electricity suppliers. Several electricity suppliers emphasised the importance of maintaining a market model in which the electricity supplier remains the customer’s primary point of contact. Their concern seems to be that the role of the electricity supplier will be eroded as a result of the introduction of the scheme. Further, smaller DSOs have pointed out that the administration of the scheme will entail significant administrative burden and costs, without there being a compensation system in place.

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<sup>23</sup> See also Attachment V for example.

<sup>24</sup> Attachment IV.

<sup>25</sup> See also Statistics Norway (2023) <https://www.ssb.no/energi-og-industri/energi/statistikk/produksjon-og-forbruk-av-energi-energibalanse-og-energiregnskap/artikler/lavere-stromforbruk-men-mer-bruk-av-ved-i-2022>: “The increase in electricity prices has contributed to rising wood consumption in recent years. In 2022, the use of wood and pellets in households rose by 6.3 per cent from the previous year, reaching 6.7 TWh, which is the highest level since 2012. Around 20 per cent of this is used in holiday homes.”

<sup>26</sup> NVE (2023) <https://www.regjeringen.no/no/dokumenter/horing-av-forslag-til-ny-lov-om-norgespris-og-stromstonad-til-husholdninger/id3090841/Download/?vedleggId=e2133186-bf3a-41f9-bb7f-f5e147dfa97b>; DeepL-translation.

<sup>27</sup> Report dated 18 March 2025, enclosed as Attachment II, page 11.

9. **To the extent possible, please specify the provisions of EEA law (EEA Agreement, Protocols, Directives or Regulations) considered to have been infringed by the EEA EFTA State concerned:**

In our view, Norway Price **infringes several provisions of Directive 2009/72:**

- A. **Article 3** as interpreted and applied by the Court of Justice of the EU (**CFEU**), prohibiting public interventions in electricity markets that do not pursue an objective of common interest in a proportionate, non-discriminatory manner.
- B. **Articles 26** and **Article 31** concerning unbundling and prohibiting cross-subsidization.

Our main concern is that Norway Price constitutes a form of state intervention in the Norwegian electricity market that is incompatible with the Directive, in particular Article 3 thereof. We will address this issue first, before turning to the remaining points.

**A. Norway Price is to be regarded as a state intervention in the electricity market that is incompatible with Directive 2009/72**

Overview of the applicable legal framework

Recitals 1,3, 45, 50 and 53 of Directive 2009/72 read:

*“(1) The **internal market in electricity**, which has been progressively implemented throughout the Community since 1999, aims to deliver real choice for all consumers of the European Union, be they citizens or businesses, new business opportunities and more cross-border trade, so as to achieve **efficiency gains**, competitive prices, and higher standards of service, and to **contribute to security of supply** and sustainability.”*

*“(3) The freedoms which the Treaty guarantees the citizens of the Union — inter alia, the free movement of goods, the freedom of establishment and the freedom to provide services — are achievable only **in a fully open market**, which enables all consumers **freely to choose their suppliers and all suppliers freely to deliver to their customers**.”*

*“(45) Member States should ensure that household customers and, where Member States deem it appropriate, small enterprises, enjoy the right to be supplied with electricity of a specified quality at clearly comparable, transparent and reasonable prices. In order to ensure the maintenance of the high standards of public service in the Community, all measures taken by Member States to achieve the objective of this Directive should be regularly notified to the Commission. The Commission should regularly publish a report analysing measures taken at national level to achieve public service objectives and comparing their effectiveness, with a view to making recommendations as regards measures to be taken at national level to achieve high public service standards. **Member States should take the necessary measures to protect vulnerable customers in the context of the internal market in electricity**. Such measures may differ according to the particular circumstances in the Member States in question and may include specific measures relating to the payment of electricity bills, or more general measures taken in the social security system.”*

*“(50) The public service requirements, including as regards the universal service, and the common minimum standards that follow from them need to be further strengthened to make*



sure that **all consumers, especially vulnerable ones, are able to benefit from competition and fair prices**. The public service requirements should be defined at national level, taking into account national circumstances; [EU] law should, however, be respected by the Member States. The citizens of the Union and, where Member States deem it appropriate, small enterprises, should be able to enjoy public service obligations, in particular with regard to security of supply, and reasonable prices. ...”

“(53) Energy poverty is a growing problem in the [Union]. Member States which are affected and which have not yet done so should therefore develop national action plans or other appropriate frameworks to tackle energy poverty, aiming at decreasing the number of people suffering such situation. In any event, Member States should ensure the necessary energy supply for vulnerable customers. In doing so, an integrated approach, such as in the framework of social policy, could be used and measures could include social policies or energy efficiency improvements for housing. **At the very least, this Directive should allow national policies in favour of vulnerable customers.**”

Article 3(1), (2) and (7) of the Directive reads:

“1. Member States shall ensure, on the basis of their institutional organisation and with due regard to the principle of subsidiarity, that, without prejudice to paragraph 2, electricity undertakings are operated in accordance with the principles of this Directive with a view to achieving a competitive, secure and environmentally sustainable market in electricity, and shall not discriminate between those undertakings as regards either rights or obligations.

[...]

2. Having full regard to the relevant provisions of the [FEU Treaty], in particular Article [106] thereof, Member States may impose on undertakings operating in the electricity sector, in the general economic interest, public service obligations which may relate to security, including security of supply, regularity, quality and price of supplies and environmental protection, including energy efficiency, energy from renewable sources and climate protection. Such obligations shall be clearly defined, transparent, non-discriminatory, verifiable and shall guarantee equality of access for electricity undertakings of the [European Union] to national consumers.

[...]

7. Member States shall take appropriate measures to protect final customers, and shall, in particular, ensure that there are adequate safeguards to protect vulnerable customers. In this context, each Member State shall define the concept of vulnerable customers which may refer to energy poverty and, *inter alia*, to the prohibition of disconnection of electricity to such customers in critical times. Member States shall ensure that rights and obligations linked to vulnerable customers are applied.”

It is in essence the set of recitals and provisions quoted above that is the foundation for established jurisprudence relating to Directive 2009/72 and its predecessor<sup>28</sup>, according to which *public intervention* in electricity markets, and in particular *price regulation*, is only compatible with the Directive under certain circumstances.

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<sup>28</sup> As well as Directive 2009/73, and its predecessor, which relate to gas markets.

The lead case *Federutility*<sup>29</sup> concerned an Italian law which allocated to the regulator the power to define reference prices for gas supplies to domestic customers<sup>30</sup>.

The CFEU held that the principal presumption of the rules on the internal energy market is the development and maintenance of competitive markets. Accordingly, the price for the supply of energy should be the result of market forces, not one which is set by the State.

Indeed, according to the Court, “*although it is not explicitly stated in that provision, or indeed in any other provisions of that directive, that the price for the supply of natural gas must, as from 1 July 2007, be determined solely by the operation of supply and demand, that requirement follows from the very purpose and the general scheme of that directive*”.<sup>31</sup>

This line was confirmed by a series of cases including *ENEL*<sup>32</sup>, *Commission v Poland*<sup>33</sup> and *ANODE*<sup>34</sup>. In these cases, the Court also developed on the circumstances under which price regulation nonetheless can be compatible with the Directive.

Before we revert in greater detail to those circumstances, note that this jurisprudence was also applied to schemes that do not directly fix prices but entail another form of state intervention affecting the free formation of prices by the rule of demand and supply.

A recent example of this is case C-683/19, concerning a discount to market prices for vulnerable (retail) customers in Spain. The main question in the judgement related to financing of the discount, not the discount itself. However, no indications can be gleaned from the judgement that had the government financed the discount directly, it would not have been considered a “state intervention”, which in principle falls foul of Directive 2009/72. Conversely, the AG’s opinion explains convincingly that the regulated discount was a constitutive part of a wider public service obligation, which also contained financing obligations of that discount for a range of undertakings.

It would thus seem clear that *any* State intervention *affecting* prices being established solely by market forces can only be compatible with Directive 2009/72 under certain conditions, and that this state intervention can also relate to discounts or subsidies for retail consumers.

Furthermore it is also, and arguably particularly, free competition in retail markets that is meant to be preserved, as illustrated by a case relating to a Spanish measure supporting certain sources of electricity production (gas) in order to achieve a reduction in prices on the wholesale market, which should in turn lead to a reduction of prices on the retail market.

In this case, T-596/22, the Court found that the measure “*in so far as it limits the direct involvement of the national authorities in price formation on the wholesale market and **does not extend it to the retail market [...] preserves as far as possible the principle of the free formation of electricity prices on the basis of demand and supply***”.<sup>35</sup> (emphasis added)

The formulation that the Spanish measures “*preserved as far as possible*” the free formation of prices, brings us to the circumstances under which state intervention can be lawful.

In this regard, the CFEU recalled for example in *ANODE* that “*although State intervention in the fixing of the price of supply of natural gas to the **final consumer** constitutes an obstacle to the achievement*

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<sup>29</sup> Case C-265/08.

<sup>30</sup> Not that Directive 2009/72 is equivalent in relevant content as Directive 2009/73, and the CJEU has applied its gas-related jurisprudence to electricity regulation in the following years.

<sup>31</sup> Case C-265/08 paragraph 18.

<sup>32</sup> Case C-242/10.

<sup>33</sup> Case C-36/14.

<sup>34</sup> Case C-121/15.

<sup>35</sup> Case T-596/22 paragraph 80. Note that the case concerns Directive 2019/944 (the Fourth Electricity Directive). We will revert to the legal significance of this Directive further below.

of a competitive natural gas market, that intervention may none the less be accepted within the framework of Directive 2009/73 if **three conditions** are satisfied.

- First, the intervention must pursue an **objective of general economic interest**,
- secondly, it must comply with the **principle of proportionality**, and,
- thirdly, it must lay down **public service obligations that are clearly defined, transparent, non-discriminatory** and verifiable, and guarantee equal access of EU gas undertakings to consumers”<sup>36</sup> (emphasis added).

Regarding in particular the principle of proportionality, the Court held that

“compliance with the principle of proportionality means, first, that the measure in question must be appropriate for securing the objective of general economic interest which it pursues”<sup>37</sup> and that

the method of intervention used must not go beyond what is necessary to achieve the objective of general economic interest being pursued<sup>38</sup> [...] and that

the requirement of necessity must also be assessed with regard to the scope ratione personae of the measure in question and, more particularly, its beneficiaries (emphasis added).”<sup>39</sup>

In our view, case law relating to Directive 2009/72 thus entails that **any public intervention in electricity markets, be it at the wholesale or retail level, is only compatible with EEA law if that intervention pursues a clearly defined objective of general economic interest in a proportionate and non-discriminatory manner.**

As we will show in the following, Norway Price is such an intervention, and it is highly doubtful that it complies with the legal test with the criteria as set out in the forgoing. We will elaborate on this in more detail below.

Before doing so, we note that the evolution of the EU acquis in this field since Directive 2009/72 entered into force, albeit not formally part of the EEA Agreement to date, may be relevant for the interpretation and application of Directive 2009/72’s provisions.

Indeed, this Directive’s successor, Directive 2019/944, and its amendment, Directive 2024/1711, does little more, at least in parts, than clarify existing provisions and concepts, and can therefore arguably be regarded as partial codification act. Recitals 1-3 as well as the Commission’s proposal for the Directive support this view.<sup>40</sup> Thus, it is in our view appropriate to take into account pertinent provisions of Directive 2009/72 successor’s act, and in particular also case practice, when that practice relates to established concepts such as state intervention, public service obligations and their proportionality.

Of particular relevance in that respect is the fact that Directive 2019/944 makes clear in Article 5 that public intervention in electricity prices ought in principle to be applied *only* for vulnerable household

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<sup>36</sup> Case T-596/22 paragraph 36.

<sup>37</sup> Case T-596/22 paragraph 55.

<sup>38</sup> Case T-596/22 paragraph 64.

<sup>39</sup> Case T-596/22 paragraph 66.

<sup>40</sup> See COM(2016) 864 final, chapter 6, page 19: “Chapter II of the proposed Directive lays down the general principle that Member States have to ensure that the EU electricity market is competitive, consumer-centred, flexible and nondiscriminatory. It emphasises that national measures should not unduly hamper cross-border flows, consumer participation or investments. It further enshrines the principle that supply prices shall be market-based, subject to duly justified exceptions. The chapter also clarifies certain principles relating to the functioning of the EU electricity markets, such as the right to choose a supplier. It also provides for updated rules on possible public service obligations which may be imposed by Member States on energy undertakings under certain circumstances”.

customers, subject to the conditions in paragraph 4. This understanding, and the negative effects of intervention in the price formation function of market forces, is illustrated by recital 22, stating that

*“public service obligations in the form of price setting for the supply of electricity constitute a fundamentally distortive measure that often leads to the accumulation of tariff deficits, the limitation of consumer choice, poorer incentives for energy saving and energy efficiency investments, lower standards of service, lower levels of consumer engagement and satisfaction, and the restriction of competition, as well as to there being fewer innovative products and services on the market. Consequently, Member States should apply other policy tools, in particular targeted social policy measures, to safeguard the affordability of electricity supply to their citizens”.*

In a similar vein, Directive 2024/1711 creates an additional exemption from the main premise that state intervention in electricity pricing is prohibited. Indeed, during an electricity price crisis, which the EU Council has to declare, certain public interventions can be lawful, provided the conditions of article 66(a)(7) are complied with. Note that even in such a situation, the reduced price can only be applied to a share of 80% of median household consumption and must retain an incentive for demand reduction. Furthermore, according to recital 28, *“it is necessary to ensure that such price regulation [...] does not create incentives to increase consumption”*. Needless to say that Norway Price, even if an electricity price crisis has been declared for Norway, would not comply with these provisions, because the scheme covers more than 80% of median household consumption, and does not retain incentives for demand reduction.

Finally, the now expired Regulation 2022/1854 on emergency intervention to address high energy prices, also permitted certain state interventions in pricing, including for SMEs, but only if incentives for demand reduction were retained (compare in particular Articles 12 and 13 of the Regulation).

In our view, this recent evolution of the EU acquis regarding public intervention in electricity prices and price setting ought to be taken into account also when applying Directive 2009/72. In doing so it becomes even clearer that state intervention regarding electricity prices is only permissible under certain, narrowly defined circumstances, and must not fully remove incentives to save energy, or conversely, incentivise increased consumption.

In the following, we will explain why Norway Price in our view is to be regarded as state intervention that does not comply with the requirements that follow from the applicable legal framework and hence entails that the scheme is incompatible with Directive 2009/72.

#### Norway Price is a state intervention and tantamount to price regulation

A literal understanding of the term “state intervention” suggests that Norway Price is such an intervention. For example, the term is defined by Policonomics as *“any action carried out by the government or public entity that affects the market economy with the direct objective of having an impact in the economy, beyond the mere regulation of contracts and provision of public goods”*.<sup>41</sup> Evidently, Norway Price is an action by the State, and is intended to, and will, have an effect on the economy.

Furthermore, the jurisprudence referred to above makes clear that any measure that interferes with electricity prices being purely a result of market forces is to be considered as “state intervention”. Thus, if the measure in question has the effect of influencing the prices electricity customers must pay, there is a state intervention in the meaning of this jurisprudence.

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<sup>41</sup> Policonomics (undated) <https://policonomics.com/government-intervention/>.

This seems undoubtedly to be the case for Norway Price. Indeed, the scheme will de facto fix the price for a large share of Norwegian household customers. Accordingly, on the retail level, electricity prices will be almost fully detached from market prices and, importantly, market signals. That is in our view sufficient for the scheme to be considered as state intervention.

Moreover, it cannot in our view be contested that the scheme will impact and hence interfere with market dynamics also on the wholesale market, as indicated in our presentation of the factual background. Anybody but household customers who have chosen Norway Price will presumably pay at times more than what would have been the market price in the absence of the intervention, both in Norway and in neighbouring countries. The scheme might even affect incentives for new electricity and energy production to be installed. This is particular the case for heat pumps and solar energy installed in private homes. Planned projects were already aborted in the wake of Norway's Price announcement<sup>42</sup>.

In any event, there is no indication in jurisprudence that only measures "directly interfering" with the wholesale market, as suggested in the legislative proposal, are to be considered as state intervention. In fact, most cases that the CFEU has dealt with concern price regulation or other types of state intervention on the retail level, and most recent jurisprudence suggests that it is in particular competition on the retail market that ought to be protected from state intervention.

The foregoing is also in line with recent (state aid) case practice from the European Commission. For example, the Commission approved at the height of the recent energy crisis a Dutch scheme consisting of grants to SMEs and households covering the difference between market prices for certain types of energy (heat, electricity, gas), and reference prices, up to a certain quantity per month (2900 kWh for electricity).<sup>43</sup> In assessing the compatibility of the aid to SMEs, the Commission stated, without further consideration, that "*by establishing a maximum price which consumers will pay for certain quantities of electricity, the measures constitutes a public intervention in price setting*".<sup>44</sup> This intervention – in favour of SMEs – was seemingly only possible on the basis of Regulation 2022/1854, and would likely not have been compatible with Directive 2019/2944. This case illustrates that also subsidy schemes that directly impact the prices electricity customers pay are to be considered as State interventions.

Finally, and for the sake of completeness, Norway Price would appear to be tantamount *in effect* to price regulation from an economic perspective anyhow. The fact that the State assumes the economic burden for the measure, i.e. compensates consumers for the difference between market price and regulated price, instead of imposing the burden on economic actors, does not make Norway Price less of a "price regulation" in our view. Further, price regulation in the meaning of pertinent case law does not have to apply to all customers or be mandatory.<sup>45</sup>

In view of the foregoing, it follows that Norway Price should be considered as "state intervention" in the meaning of the case law pertaining to Directive 2009/72.

In fact, recital 45 of the Directive further illustrates that EEA EFTA States are entitled, in principle, to intervene in markets by means of public services obligations (PSOs), and specifically in favour of vulnerable customers, in order to ensure the provision of electricity at reasonable prices. Such interventions need to be notified to the Authority. For vulnerable customers, state intervention can

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<sup>42</sup> <https://www.aftenposten.no/oslo/i/kwVqgB/borettslaget-hadde-planer-om-aa-pepre-takene-med-solceller-saa-kom-norgespris>

<sup>43</sup> SA.104994.

<sup>44</sup> SA.104994 paragraph 72.

<sup>45</sup> Compare case C-121/15.

include measures relating to the payment of electricity bills. If even such measures are deemed notifiable state interventions, then certainly, Norway Price is to be considered as such too.

Lastly, note that Norway Price will significantly affect competition in supplier market(s) too. As indicated in the foregoing, different energy (and perhaps even electricity) sources will be affected by the scheme in a different manner.

However, even in the retail electricity market, the scheme will probably dampen competition between electricity suppliers. A state-subsidised fixed-price scheme will make it impossible for the market to offer market-based fixed price contracts, which already became largely irrelevant in the wake of the electricity subsidy scheme's introduction.

Further, electricity suppliers also develop and compete based on innovative services that monitor electricity prices, and steer consumption to periods with lower prices. Such services will become at least less relevant, if not almost fully redundant. The scheme will therefore impact the market's ability to create, and importantly, reward innovation.

The foregoing illustrates why preserving market-based price signals is so important, including in particular also incentives to save electricity and electricity expenses, and so highly valued by the EEA legal order. When public intervention weakens or removes such price signals, this requires justification.

As we will see in the following, we query whether Norway Price can be justified. Indeed, the fundamental question is not whether EEA EFTA States can intervene in markets in order to ensure that electricity customers receive electricity at reasonable prices. They can. Such intervention must however be line with the test as formulated by jurisprudence, i.e.

- (i) pursue an objective of general economic interest,
- (ii) be proportionate and
- (iii) clearly defined and non-discriminatory.

The non-compliance of Norway Price with these conditions will be addressed in turn.

#### Norway Price may not pursue an objective of common interest

EEA EFTA States are granted wide discretion in defining "objectives of common interest", and in light of Directive 2009/72's relevant provisions, as well as pertinent case law, it is in principle permissible to put in place measures to shield electricity consumers from *overly* high market prices. For *vulnerable* customers, which Member States have a duty to define pursuant to Article 3(7) of the Directive, it is furthermore permitted to adopt specific measures relating to the payment of electricity bills.

Norway Price is available to every household in Norway, as well as for holiday homes. It cannot be reasonably argued that every household is to be considered as vulnerable. In any event, a definition of vulnerable customers is absent from the legislative proposal.

Thus, it is clear that Norway Price cannot be regarded as state intervention in favour of vulnerable customers. To what extent an intervention into electricity prices going beyond the protection of vulnerable customers is permissible in principle is less clear in our view, not at least in view of the evolution of the EU *acquis* as described above, and in light of recent case practice.

Recall the Commission's consideration in the Dutch state aid case mentioned above.<sup>46</sup> The Commission's decision contains a detailed assessment of the subsidy scheme against Directive 2019/944 and Regulation 2022/1854, to which we will briefly revert below. Perhaps most interesting

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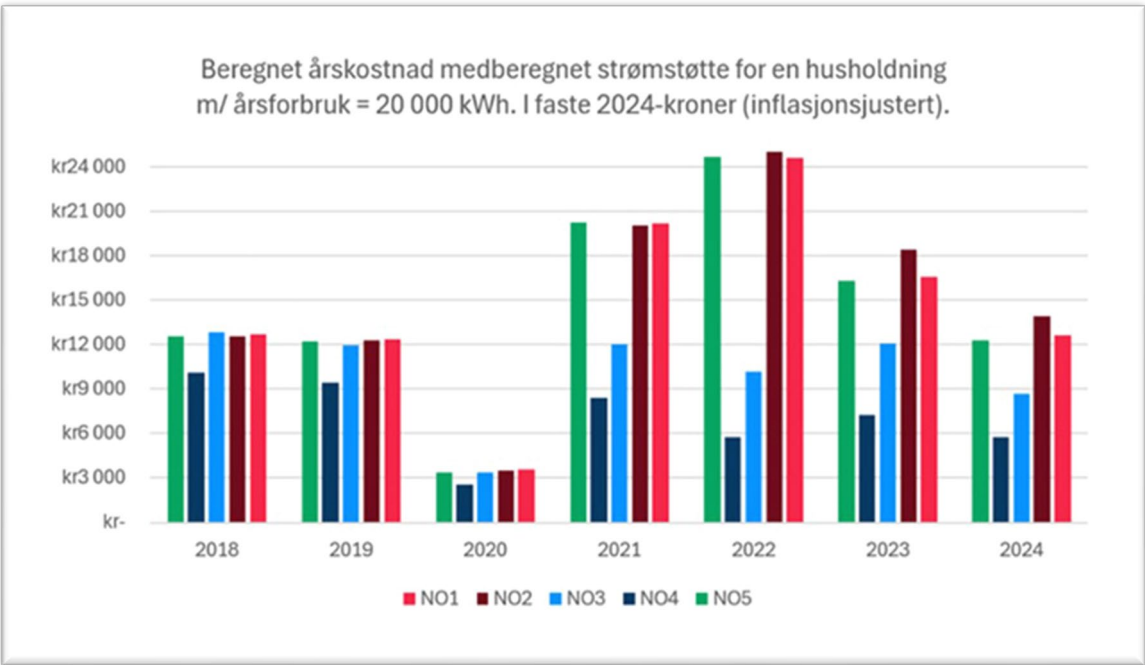
<sup>46</sup> SA.104994



though are the Commission’s consideration regarding the gas subsidy element of the scheme, against Directive 2009/73 - the gas equivalent to Directive 2009/72 - which has not yet been replaced by a new or recast Directive.

The Commission states that the measures “*is in the general economic interest, because it aims at providing liquidity and predictability of energy bills to SMEs at a time when a wide range of economic sectors are affected, the normal functioning of markets is severely disturbed leading to severe disturbances of the real economy of Member States, including in the economy of the Netherlands*”.<sup>47</sup> This would suggest that an intervention in the electricity or gas markets with a measure such as Norway Price (or the Dutch subsidy scheme) is only permissible be when there is an energy crisis – and would not be otherwise.

The recent energy crisis has passed, however. Thus, whether the introduction of a scheme of the economic scale and significance for all households (and holiday homes!) such as Norway Price can be deemed to be in the common interest, is questionable. In Norway, electricity prices are roughly back to pre-crisis levels, and there already is a generous electricity subsidy scheme in place that shield customers from the particularly expensive periodic electricity prices, as the following illustrates shows:



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Figure 2: Estimated electricity cost for a household

The same result can be gleaned from a calculation made by the power company Lyse AS, showing that inflation adjusted electricity prices in Norway are in line with pre-crisis levels<sup>49</sup>.

Recall also that electricity prices in Norway are lower than in the neighbouring Nordic countries.

It would thus seem that Norwegian households already enjoy reasonable electricity prices, and pushing prices down further is no longer in the common interest. Given furthermore the focus of Directive 2009/72 on the need to protect (and define) vulnerable customers, it seems particularly questionable if subsidising mainly the electricity consumption of the wealthiest, and their holiday homes, is an objective of common interest.

<sup>47</sup> SA.104994 paragraph 79.

<sup>48</sup> <https://www.energiaktuelt.no/-stroemprisen-for-husholdninger-i-soer-norge-nesten-tilbake-paa-2019-nivaa.6706425-575505.html> with source: NVE.

<sup>49</sup> [https://energiwatch.no/nyheter/politikk\\_marked/article17789369.ece](https://energiwatch.no/nyheter/politikk_marked/article17789369.ece)

The Norwegian government has argued that the main intention with Norway Price is to provide for predictable, stable prices. It is not clear if price stability can be seen as an objective of common interest, all the more as the ongoing renewables revolution will necessarily entail greater fluctuations of electricity market prices. These fluctuations are not per se harmful and need not result in overall unreasonably expensive electricity bills – they also entail valuable price signals for customers to move electricity consumption.

Finally, we consider it to be clear that the scheme will have harmful environmental effects, by undermining both energy efficiency efforts and use of alternative energy sources, at a time when electricity is becoming both increasingly scarce and critically important for decarbonizing our economy.

The EFTA Court has recently held that

*“According to Article 73 EEA the action by the Contracting Parties relating to the environment shall have the following objectives: (i) to preserve, protect and improve the quality of the environment; (ii) to contribute towards protecting human health and (iii) **to ensure a prudent and rational utilization of natural resources.***

[...]

*The Court recalls that **combating climate change is an objective of fundamental importance** given its adverse effects and the severity of its consequences, including the grave risk of their irreversibility and its impact on fundamental rights”<sup>50</sup> (emphasis added).*

Arguably, such considerations imply that EEA EFTA States’ discretion to define “objectives of common interest” that are in conflict, or at least create tension with the Article 73 of the EEA Agreement and the objective of combating climate change, is more limited than previously thought.

In any event, these considerations may also have a bearing on what is in our view decisive, namely that the scheme seems to be in conflict with the proportionality principle.

#### Norway Price is probably in conflict with the proportionality principle

In light of pertinent case law, a state intervention into the electricity market is proportionate if the measure is appropriate to achieve the objective, and it is limited to what is strictly necessary to achieve the objective, including in particular as regards its circle of beneficiaries.

Appropriateness has a nuanced meaning in the case law of EEA courts, and is sometimes understood as the suitability of a measure to achieve a certain objective, and in other instances more as a test of whether or not the chosen measure is most appropriate, i.e. whether there are other measures that would better achieve the objective. While it is true that EEA EFTA States do not have to demonstrate, positively, that no other conceivable measure would (better) achieve the objective, it is in our view nonetheless arguable that EEA EFTA States at the very least need to *consider* different policy choices – which in the case at hand are readily available. It suffices here to refer to the Commission’s Communication *“Tackling rising energy prices: a toolbox for action and support”*,<sup>51</sup> where the Commission outlines inter alia in section 3.1. that energy vouchers and direct transfers for the most vulnerable, could be a means to respond to unacceptably high energy prices. For Norway Price, however, no alternative measures were considered, as criticized inter alia by the Better Regulation Council.

In any event, it is in particular the question whether Norway Price is limited to what is “strictly necessary” that is decisive. In our view, that is not the case.

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<sup>50</sup> Case E-18/24, paragraphs 66-67.

<sup>51</sup> COM/2021/660/final (2021) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2021%3A660%3AFIN&qid=1634215984101>.

First, in view of the grave implications of the scheme for businesses, other energy sources and energy saving technologies, and neighboring countries, and the availability of measures that would not have such effects – such as money transfers, the scheme cannot be considered as proportionate.

Let us for example assume that the budgeted NOK 7 billion for 2026 would be distributed amongst the 20% poorest households.<sup>52</sup> This would amount to ca. NOK. 14 000 per household – and would cover the total electricity cost of an apartment with a yearly electricity consumption of 10 000 kWh at price of NOK 1.4 per kWh. Such a measure would not interfere with the electricity market, would preserve incentives to save energy, and would not negatively affect other energy sources and saving technologies.

THEMA consulting has also analyzed alternatives to Norway Price, and concludes in the same way, namely that direct transfers would better protect the poor from high energy bills, without the undesirable effects that Norway Price will have.<sup>53</sup>

Second, and further to our above considerations as regards the circle of beneficiaries, it seems at least questionable if it is proportionate to protect the electricity consumption of the wealthy and wealthiest from market signals, given also the fact that it is those that surely have both the (economic) ability and incentive to invest in energy saving and efficiency.

Granted, in pertinent jurisprudence, the main consideration thus far as regards the circle of beneficiaries has mainly related to the distinction between households versus other, commercial customers.

In our view, that does however not necessarily mean that a distinction ought not also be made for different types of households, and that a measure that applies particularly forcefully to those with high electricity consumption – which mostly are the wealthiest households – would require particular justification. Furthermore, the measure is less favorable for those that have invested in electricity efficiency. It also is contingent on an active opting in, thus presumably excluding many of those with less knowledge or inertia, and hence vulnerable customers. The measure thus not only has a regressive effect, and seems inappropriate from a social policy perspective, but also runs counter the Directive's objective to protect, in particular, vulnerable customers. These customers will benefit little, if at all, from Norway Price, and have to finance the administration of the scheme through increased network levies (see further below). This may also mean that a share of vulnerable households ends up with higher electricity costs than in a scenario without Norway Price.

The Commission's consideration in the Dutch state aid case mentioned above<sup>54</sup> sheds further light on pertinent proportionality considerations.

The Commission considered the gas aspect of that scheme as proportionate on the basis of Directive 2009/73 inter alia because it "*only compensates beneficiaries up to a limited amount of their consumption [...] and on the basis of prices which are set above pre-crises prices of the respective energy sources*".<sup>55</sup> Norway Price would conversely apply, as indicated above, to the entire consumption of almost all households opting for it. It is furthermore not set above historical electricity prices, as indicated above. With Norway Price, Norway's electricity customers will pay (even more significantly) less than customers in its Nordic neighbour countries (see THEMA report dated 27 May 2025, enclosed as Attachment III, page 26).

As for the electricity part, the decision regarding the Dutch scheme contains an assessment of the measures against the applicable legal framework, including in particular Directive 2019/944. The

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<sup>52</sup> Ca. 500 000 of a total of ca. 2,5 million households in Norway.

<sup>53</sup> See Attachment III. See also Norsk klimastiftelse (2025)

<https://www.klimastiftelsen.no/publikasjoner/stromstotte-som-fordeling-av-grunnrente>

<sup>54</sup> SA.104994.

<sup>55</sup> SA.104994 paragraphs 79-82.

Commission also here places particular emphasis on the fact that “*by setting a clear ceiling of consumption to be taken into account for the grant calculation, beneficiaries retain an incentive for demand reduction for consumption above that limit*”.<sup>56</sup>

In our view, the high consumption cap for Norway Price which for practical purposes shields the entire consumption from market signals, and hence removes the incentive for demand reduction, or moving demand, is a particularly apparent weakness of the scheme, and is in and itself sufficient to make it fall foul of the proportionality criteria as developed by case law and practice.

For the above reason, we consider that Norway Price would constitute a disproportionate intervention in the electricity market, which for that reason alone is in breach of Directive 2009/72 and the EEA Agreement.

#### Norway Price may entail discriminatory financing of the scheme's administration costs

As indicated above, the administration of Norway Price will entail considerable costs for DSOs. No compensation for these costs is provided for in the scheme. Accordingly, costs will need to be financed through the network levies applied to all electricity customers.

This means that both households not opting for Norway Price, and electricity consumers that are not eligible under the scheme, will ultimately have to bear these costs.

In our view, this may entail an element of discrimination which is incompatible with Directive 2009/72. In a case relating to the financing of a gas storage obligation in Bulgaria, for instance, the CFEU held that because the obligation benefitted all consumers, it was *prima facie* not discriminatory for the financial burden to be allocated to all consumers, according to their consumption.<sup>57</sup>

In the case of Norway Price however, the scheme will demonstrably not benefit all electricity consumers. Allocating the costs of the scheme to those that do not benefit from it (e.g. businesses and municipalities), and who in addition may experience higher electricity prices and network tariffs because of it, is thus arguably discriminatory.

### **B. The administration of Norway Price may infringe the Directive's unbundling- and cross-subsidy provisions**

#### Overview of the applicable legal framework

Directive 2009/72 also provides for the unbundling of distribution and supply of electricity.

Of particular relevance here is Article 26(1), providing that “[w]here the distribution system operator is part of a vertically integrated undertaking, it shall be independent in terms of legal form, organisation, and decision making from **other activities not relating to distribution**.” The term “[d]istribution” is defined in Article 2(5) as “the transport of electricity on high-voltage, medium-voltage and low-voltage distribution systems with a view to its delivery to customers but does not include supply”. (emphasis added)

Further, the Directive requires unbundling of accounts and prohibits cross-subsidization in its Article 31:

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<sup>56</sup> SA.104994 paragraph 74.

<sup>57</sup> Case C-5/19.

*“1. Member States shall take the necessary steps to ensure that the accounts of electricity undertakings are kept in accordance with paragraphs 2 and 3.*

*[...]*

*3. Electricity undertakings shall, in their internal accounting, keep separate accounts for each of their transmission and distribution activities as they would be required to do if the activities in question were carried out by separate undertakings, with a view to avoiding discrimination, cross-subsidisation and distortion of competition [...].” (emphasis added)*

#### The unbundling requirements of Directive 2009/72 may be infringed by Norway Price

The separation (unbundling) of grid operations (monopoly based) and electricity supply (competitive market) is a fundamental principle of Directive 2009/72 and the Norwegian Energy Act, which implements the directive into Norwegian law.

In Norway, DSOs are either companies that only perform distribution activities, or form part of so-called vertically integrated undertakings, i.e. companies that perform also other activities than distribution.

The administration of Norway Price would in our view need to be considered as a “non-distribution activity”, meaning that this activity must be separated, in compliance with the Directive’s unbundling rules, from distribution activities.

However, Norway Price imposes the administration of the scheme on DSOs. In particular for vertically integrated DSOs, this would seem to be incompatible with the Directive, based on purely a literal interpretation of the Directive’s pertinent provisions. Administration of Norway Price being a “non-distribution activity”, it would need to be independent from distribution in terms of legal form, organization and decision making.

In addition, and in line with concerns raised in the public consultation, the administration of Norway Price necessitates more direct exchanges of DSOs with customers including as to whether or not to choose Norway Price, interactions and follow-up regarding complaints, payments and so on – which might possibly erode the role electricity suppliers have and ought to have in the market. The administration of Norway Price by DSOs thus creates precisely the type of risks that the unbundling requirements are meant to prevent, namely that (integrated) DSOs can leverage their “monopoly” position to fortify their position in electricity supply. Note that these concerns are shared by most of the smaller DSOs.<sup>58</sup>

In addition, we consider that the regime entails an infringement of Article 31 of the Directive, and in particular paragraphs 3 and 4 thereof. These provisions require separate accounts to be kept for distribution and transmission. Further, cross-subsidies between different activities have to be avoided.

As set out above, DSOs will incur losses from the administration of Norway Price, a non-distribution activity, which needs to be financed (cross-subsidized) through network levies, which form part of the distribution activities. In other words, the administration and consulting role that DSOs will be forced

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<sup>58</sup> See for example Energiteknikk (2025) <https://energiteknikk.net/2025/05/norgesprisen-ma-ut-av-takeheimen/> and Distriktenergi’s response to the public consultation: <https://www.regjeringen.no/no/dokumenter/horing-av-forslag-til-ny-lov-om-norgespris-og-stromstonad-til-husholdninger/id3090841/?uid=70e5c89c-ad41-4710-932c-dbe26cd94b19>.

to play in the Norway Price scheme, and that is at the very least closely related to electricity supply activities, needs to be financed by distribution activities. In our view, this infringes Directive 2009/72.

**10. Have you had any earlier contact with the EFTA Surveillance Authority?\***

- ☒ Yes  
☐ No

**11. If yes, please provide details of earlier contact (if appropriate and possible, please attach copies of any emails, letters, decisions etc.):**

Short legal analyses have been shared with Authority on 8 April 2025, and on 28 May 2025. Compared with these analyses, the present complaint has a more detailed factual background, and more refined legal analysis. It is therefore not necessary for the Authority to consider these earlier submissions for the purposes of assessing the present complaint.

**12. If applicable, please provide details of any contact with national authorities, whether central, regional or local (if appropriate and possible, please attach copies of any emails, letters, decisions etc.):**

Not applicable

**13. If applicable, please provide details of any administrative actions, such as complaints to relevant national administrative authorities (whether central, regional or local) and/or to national or regional ombudsmen:**

Not applicable

**14. If applicable, please provide details of any action taken in national courts or through other legal procedures such as arbitration or conciliation. Please state whether a decision or award has already been adopted and, if appropriate, attach a copy:**

Not applicable

**15. Specify any evidence or documents supporting the complaint, including any national measures (if possible, please attach copies):**

- The Norwegian Ministry of Energy's public consultation note is available [here](#).
- The responses to the consultation note from different actors are available [here](#).
- List of Annexes:
  - o Attachment I – Virkninger av Norgespris
  - o Attachment II – Consequences of state-run electricity price hedging (Norgespris)
  - o Attachment III – Alternativer til Norgespris
  - o Attachment IV – Mulige virkninger av Norgespris for vedfyring
  - o Attachment V - Smart-lading ville ikke blitt utviklet hvis alle hadde fastpris



**16. Confidentiality (please tick one of the boxes): \***

- ☐ I authorise the EFTA Surveillance Authority to disclose my identity in its contacts with the authorities of the EEA EFTA State against which the complaint is made.
- ☒ I request the EFTA Surveillance Authority not to disclose my identity in its contacts with the authorities of the EEA EFTA State against which the complaint is made.

**Please note that unless otherwise indicated here, the Authority may disclose your identity in its contacts with the EEA EFTA State against which the complaint has been lodged.**

**17. Date and place of submission of complaint:\***

10 August 2025, Oslo, Norway