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Combatting high energy prices in the Netherlands

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Introduction

The war in Ukraine has created a unique situation in the international energy market. The Dutch government cannot independently influence the energy market. The government can, however, intervene locally to make sure that Dutch citizens have enough access to energy to meet their basic needs at a reasonable rate.

On 20 September 2022, the government announced the measures it will undertake regarding high energy prices. The measures include a temporary generic "price cap" on electricity and gas prices for small users as of 1 January 2023.⁽¹⁾ In short, the energy price cap entails small users, such as households, self-employed persons and some small and medium-sized businesses (SMEs), paying a maximum rate for a capped volume of their electricity and gas consumption. The government announced that the energy price cap will be implemented by means of a subsidy scheme that compensates energy suppliers for the loss of revenue they suffer due to the energy price cap. The details of this subsidy scheme are as yet unknown.

Subsequently, on 7 October 2022, the European Council published the Council Regulation (EU) 2022/1854 (the regulation) on an emergency intervention to address high energy prices. The regulation introduces measures for member states to reduce their electricity demand and redistribute the energy sector's surplus revenues to households and SMEs.

Furthermore, the most recent developments include the European Commission's proposal on an additional new emergency regulation to address high gas prices in the European Union of 18 October 2022 (the proposal).

This article provides an overview of the recent developments concerning the proposed energy price cap in the Netherlands and a brief overview of the most important measures introduced in the regulation and the proposal.

Energy price cap

In a letter of 4 October 2023,⁽²⁾ the minister for climate and energy policy and the minister of economic affairs and climate policy (the ministers) informed the government about the proposed price cap on electricity and gas prices. This letter stated that for gas, a maximum rate of €1.45 per cubic metre up to a consumption of 1,200 cubic metres per year and for electricity, a maximum rate of €0.40 per kilowatts up to a consumption of 2,900 kilowatts per year will be set. For consumption above these volumes, the rate as agreed in the energy contract with the respective energy supplier will apply. This measure is temporary and will be effective as from 1 January 2023 until 31 December 2023.

Moreover, small users connected to a heat network will also benefit from the energy price cap. The heat tariff will be linked to the price cap for gas and will be €47.39 per gigajoule. The volume of gigajoule consumption that this price cap applies to will be worked out in the coming period.

In anticipation of this energy price cap, small users will also receive a fixed discount on their energy bill of €190 per month in November and December 2022. This is a flat rate for all small users and will be settled by the energy suppliers. The minister for climate and energy policy published the "temporary bridging scheme energy prizes small users 2022" on 18 October 2022, governing this temporary discount.⁽³⁾ This scheme determines that energy suppliers can apply for a subsidy of €190 per small user connection, within the meaning of section 95a, paragraph one, of the Dutch Electricity Act 1998, over which the supplier delivers electricity on the first day of the concerning month. The scheme is focused on electricity connections because virtually all households have those, but not all households have gas connections. The energy suppliers must apply for this subsidy twice. For November, the application must be submitted before 30 November 2022 and, for December, before 31 December 2022. The procedure by which the subsidy is passed on can be chosen by the energy suppliers, provided that the complete amount ends up with the consumer within 30 days and the energy suppliers will not benefit from the measure.

Like the temporary bridging scheme, the energy price cap will also apply to all small users of electricity and/or gas who only have one or more small consumer connections within the meaning of section 95a, paragraph one, of the Dutch Electricity Act 1998. Besides households, these include:

- self-employed people;
- stores;
- many associations;
- small social organisations; and
- smaller SMEs.

Due to the great urgency and the very short period within which the energy price cap and the temporary bridging scheme are being established, there is limited room for a tailored approach. As a result, certain small users will not be (sufficiently) accommodated by the

energy measures. This is unavoidable when introducing generic emergency measures that must enter into force very quickly. For example, block heating and block electricity fall outside the scope of the energy measures. This is because apartment buildings connected to a collective network for energy are regarded as one big household since they have one large connection. However, the government has adopted a motion committing to finding a solution for these users.⁽⁴⁾

The government also promised that it will develop a targeted compensation scheme for energy-intensive SMEs, such as bakeries, garden centres and saunas, who cannot benefit from the energy price cap. This will be established in an Energy Cost Contribution Scheme (*Tegemoetkoming Energiekosten-regeling* (TEK)). SMEs whose energy costs correspond to at least 12.5% of their turnover can receive compensation of up to €160,000 through the TEK. It is not yet known when the TEK will be available, nor whether there will be some form of compensation for large industrial users.

The users who cannot benefit from the energy price cap can, however, benefit from other measures regarding purchasing power introduced in the Budget Memorandum (*Miljoenennota*) of 2023, the ministers' state. These measures include:

- reducing energy tax;
- reducing fuel tax;
- reducing labour tax;
- increasing minimal wage and old-age pension by more than 10%; and
- increasing care allowance, rent allowance and child budget.⁽⁵⁾

The energy price cap for small users will be implemented in the form of a subsidy scheme different from the temporary bridging scheme. Just like the temporary bridging scheme, energy suppliers are expected to apply the energy price cap in their invoices and the government will compensate the energy suppliers for their lost revenue. In the case of the energy price cap, however, energy suppliers will receive monthly advances based on the expected energy supply to small users within the consumption limits below the energy price cap. The definite amount of compensation will be determined retrospectively based on the actual numbers. The Netherlands Enterprise Agency (*Rijksdienst Voor Ondernemend Nederland*) is charged with the implementation of the energy price cap and temporary bridging scheme.

Furthermore, on 11 October 2022, the Dutch House of Representatives adopted motions to prevent energy suppliers from profiting excessively from the announced price cap.⁽⁶⁾ These motions propose the monitoring of wholesale prices and energy tariffs. Furthermore, based on these motions, the actual subsidy should be based on the purchase price plus a small fee for costs incurred. Additionally, the motions include the possibility to skim off profits by means of offsetting. Finally, the motions determine that the subsidy may not be used for bonuses, dividend payments or share buybacks.

At this time, not much more is known about the design, implementation and execution of the energy price cap. It is, for example, not yet known how the government is planning to enforce the energy price cap. If the energy suppliers do not comply with the energy price cap, the government can only freeze and/or revoke the subsidy payments. To enforce the compliance of the energy price cap, the government could enter into agreements with the energy suppliers, the performance of which can be legally enforced.

Council regulation and proposal on emergency intervention

The regulation was adopted on 6 October 2022⁽⁷⁾ and introduces, among other things:

- the obligation for member states to reduce electricity consumption by at least 5% during selected peak price hours and aim to reduce overall electricity demand by at least 10% from 1 December 2022 until 31 March 2023 (section 1 of the regulation);
- a temporary revenue cap of €180 per megawatt for electricity generators, including intermediaries, that use so-called inframarginal technologies to produce electricity, such as renewables, nuclear energy and lignite (section 2 of the regulation); and,
- a temporary solidarity contribution on excess profits (the profits above a 20% increase of the average yearly taxable profits since 2018) generated from activities in the oil, gas, coal and refinery sectors (section 3 of the regulation).

Additionally, section 13 of the regulation is relevant, especially in relation to the Dutch energy price cap. This section provides for the possibility for member states to intervene in price setting for the supply of electricity, which is regarded as a market-distortive measure. Such interventions may therefore only be carried out as public service obligations and should be subject to specific conditions. These conditions include that regulated retail prices do not discriminate between suppliers or impose unfair costs on them. Suppliers should therefore be fairly compensated for costs they incur while supplying at regulated prices, without prejudice to the application of state aid rules. Furthermore, the measure must cover a limited amount of consumption and retains an incentive for demand reduction.

With the establishment of the temporary bridging scheme, the Dutch government stated that the scheme does not qualify as state aid because it does not affect interstate trade. As the amounts of subsidy involved are so small and are for a limited period of time, it cannot affect interstate trade.

Furthermore, recent developments include a proposal of the European Commission on an additional new emergency regulation to address high gas prices in the European Union of 18 October 2022.⁽⁸⁾ The proposal introduces more drastic measures combatting the excessive energy prices, including:

- equipping the EU with new legal tools to jointly purchase gas to negotiate better prices and take away competition between member states on the global gas market;
- establishing price limiting mechanisms on the main European gas exchange, the title transfer facility (TTF), by developing a new complementary LNG pricing benchmark and, in anticipation of this benchmark, a temporary mechanism to establish a dynamic price limit for transactions on the TTF; and
- default solidarity rules between member states in case of energy supply shortage and continuous efforts to reduce gas demand.

Comment

The soaring energy prices foreshadow difficult times, which calls for drastic measures, such as the proposed energy measures. At this time, not much more is known about the actual design, implementation and execution of the energy price cap in the Netherlands. However, there are concerns regarding the generic nature of the energy price cap that can possibly result in billions of public spending. Also, it is yet to be seen in what way the Netherlands will comply with the obligations as set out in the regulation and possibly also the

proposal. For now, the Netherlands must wait and see how the government will eventually shape and implement the proposed energy price cap and other measures to combat the high energy prices.

For further information on this topic please contact [Marleen Spek](#) or [Veii Jacobs](#) at *Stek Advocaten BV* by telephone (+31 20 530 52 00) or email (marleen.spek@stek.com or veii.jacobs@stek.com). The *Stek Advocaten BV* website can be accessed at www.stek.com.

Endnotes

- (1) Decision memo introducing a temporary price cap on energy (Kamerstuk 36200, nr 5), available [here](#) (in Dutch).
- (2) The letter of 4 October 2023 concerning the further development of temporary price cap on energy is available [here](#) (in Dutch).
- (3) The regulation governing the temporary bridging scheme energy prizes small users 2022 *Regeling van de Minister voor Klimaat en Energie van 17 oktober 2022, nr. WJZ/ 22508619, houdende tijdelijke regels inzake subsidie voor elektriciteitsleveranciers ter bekostiging van een tegemoetkoming voor energieprijzen voor kleinverbruikers (Tijdelijke overbruggingsregeling tegemoetkoming energieprijzen kleinverbruikers 2022)* is available [here](#) (in Dutch).
- (4) Motion by member Omtzigt et al on making a proposal in the development of the price cap for situations where there are multiple households per connection is available [here](#) (in Dutch).
- (5) Motions are available [here](#) (in Dutch).
- (6) The budget memorandum of 2023 is available [here](#) (in Dutch).
- (7) Council Regulation (EU) 2022/1854 of 6 October 2022 "on an emergency intervention to address high energy prices" is available [here](#).
- (8) The proposal for the Council Regulation (NLE) 2022/0339 of 18 October 2022 on "Enhancing solidarity through better coordination of gas purchases, exchanges of gas across borders and reliable price benchmarks" is available [here](#).