STUDIEDAG
ENERGIE & FISCALITEIT

DE NOODINTERVENTIE IN VERBAND MET DE HOGE ENERGIEPRIJZEN

BART VERMEULEN

EXXONMOBIL

EU ENERGY POLICY RESPONSE TO RUSSIA CRISIS

2022

Mar

Versailles Declaration: EU calls for plans to phase out Russian gas, oil and coal imports; ensure security of supply and affordable energy prices

May

REPowerEU: European Commission proposes comprehensive plans, a.o.

1. **Clean energy**: increase renewables from 40 to 45%; Accelerating renewable hydrogen (10MTA domestic production and 10MTA imported by 2030)
2. **Diversification** of energy supplies (Energy partnerships with e.g. North Africa, Qatar, US, Easter Med; Common purchases; Infrastructure investments)
3. **Accelerating energy savings:** raising 2030 efficiency ambition from 9% to 13%

Jul

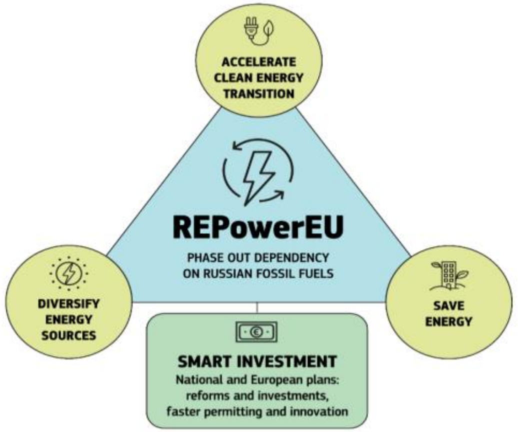
'Save Gas for Safe Winter' emergency legislation to reduce gas demand

- Voluntary 15% gas use reduction target
- Optional "Union Alert" making demand reduction mandatory (with derogations)

Oct

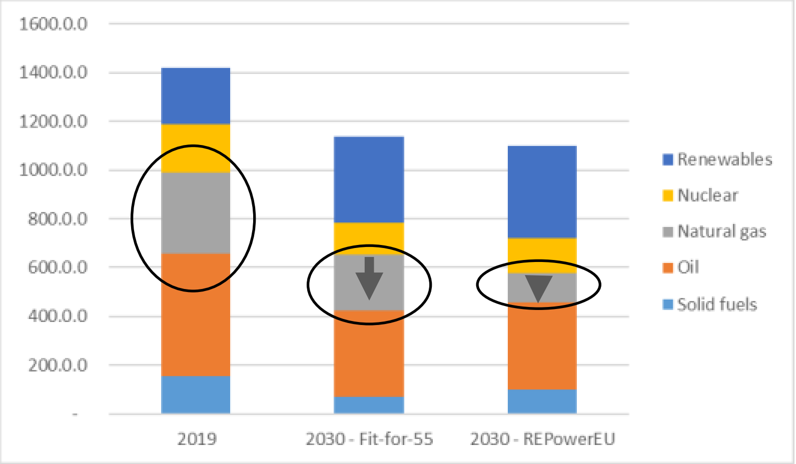
EU implements further emergency measures to cap energy prices

- Voluntary -10% target for reducing electricity use
- Cap on revenues of power companies with low cost generation (renewables, coal)
- 'Solidarity contribution' (windfall profits tax) for oil, gas, refining, coal



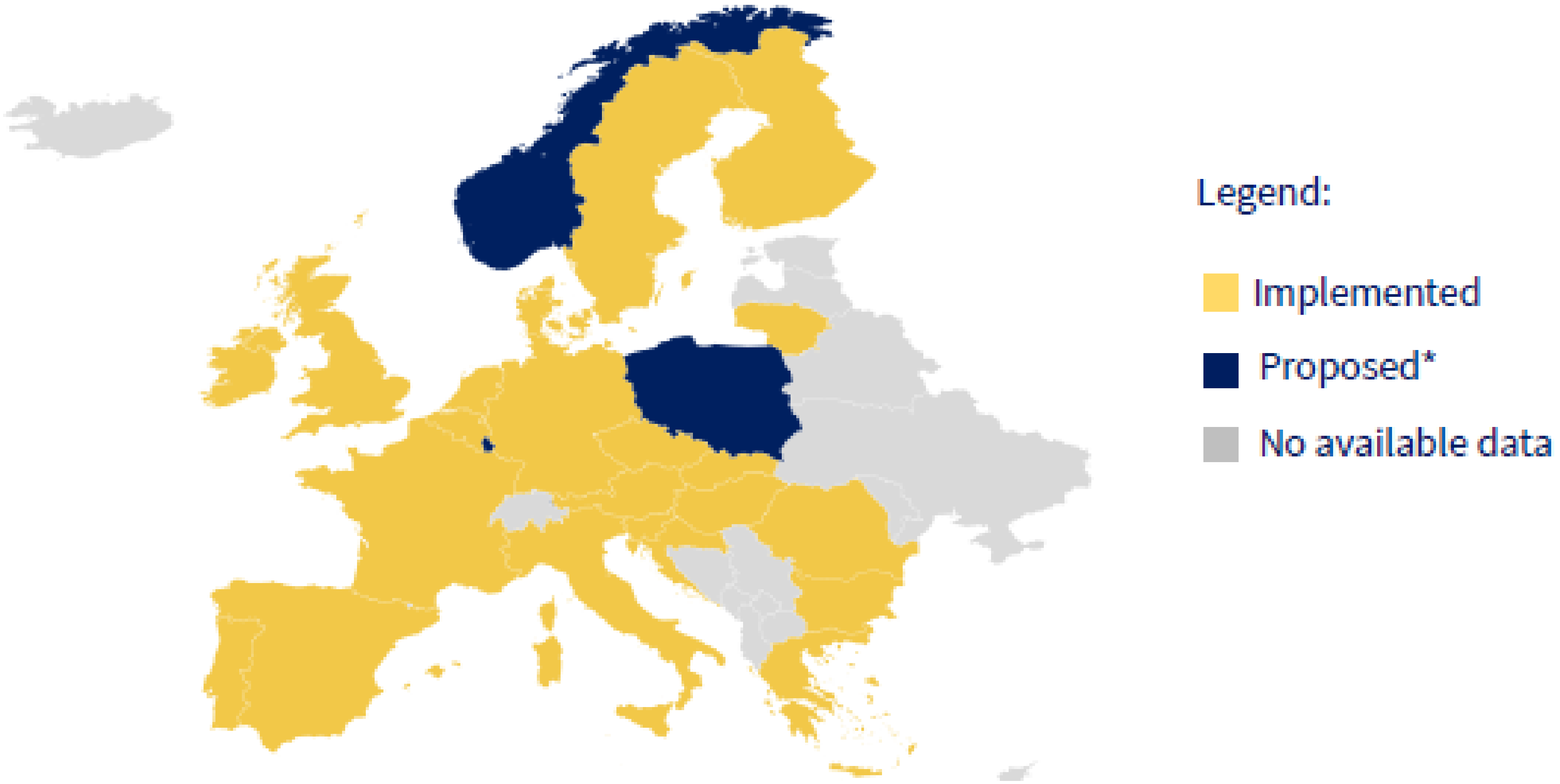
Source: EU Commission

Gross inland consumption by fuel in **2019** and in **2030** in the **Fit-for-55** and **REPowerEU** scenarios (Mtoe)



Source: Eurostat (2019) and Primes (2030)

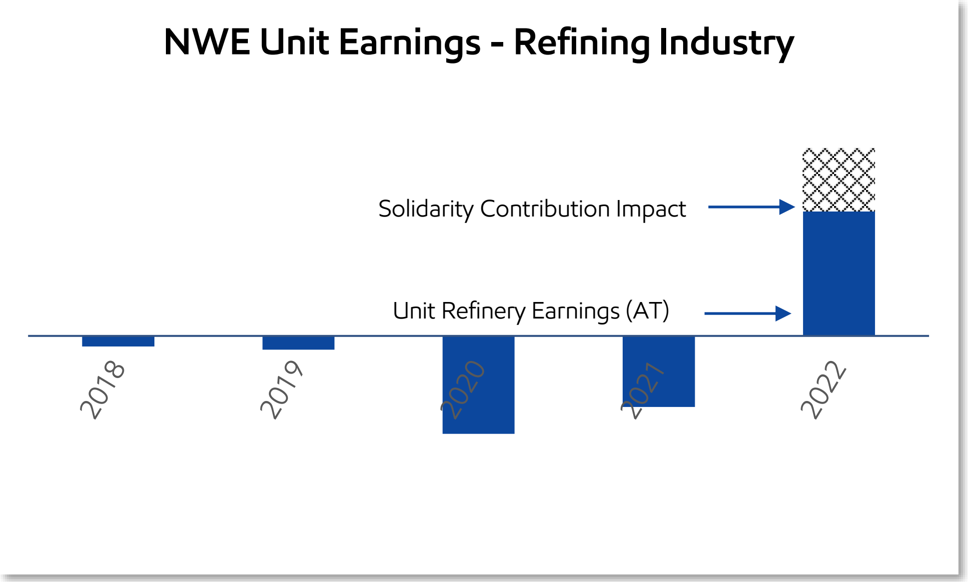
The status of the windfall profit taxes in European Countries and UK,
September 2023



KEY ELEMENTS, BUT NOT APPLIED UNIFORMLY…

…Raising issues of market distortions and uncertainty

TARGET	Activities in the **oil** (crude petroleum), **gas, coal** and **refinery** sectors with at least **75% of turnover** generated in the field of the **extraction, mining, refining** of petroleum or **manufacture** of coke oven products
TAX RATE	**Minimum 33%**
TAX BASE	**Profits** exceeding **20%** of the average taxable profits of the **3 fiscal years** starting on or after **January 1, 2018***
TAX PERIOD	Fiscal year starting on or after **1 January 2022** and/or **1 January 2023**
EXPECTED RETURNS	**€25 billion**



WINDFALL PROFITS TAXES IMPACT INVESTMENT DECISIONS

TotalEnergies

Plans to cut North Sea Investment by **£100 bln**

Reassessment of **£25 billion** investment

Hundreds of North Sea jobs at risk after Scots oil giant reacts to windfall tax

Workers at Harbour Energy were informed yesterday that jobs are at risk following the tax hike.

Easing of windfall tax, a breather for oil firms

Solidarity contribution could distort investment, says European Parliament study

Brussels, 03/04/2023 (Agence Europe)

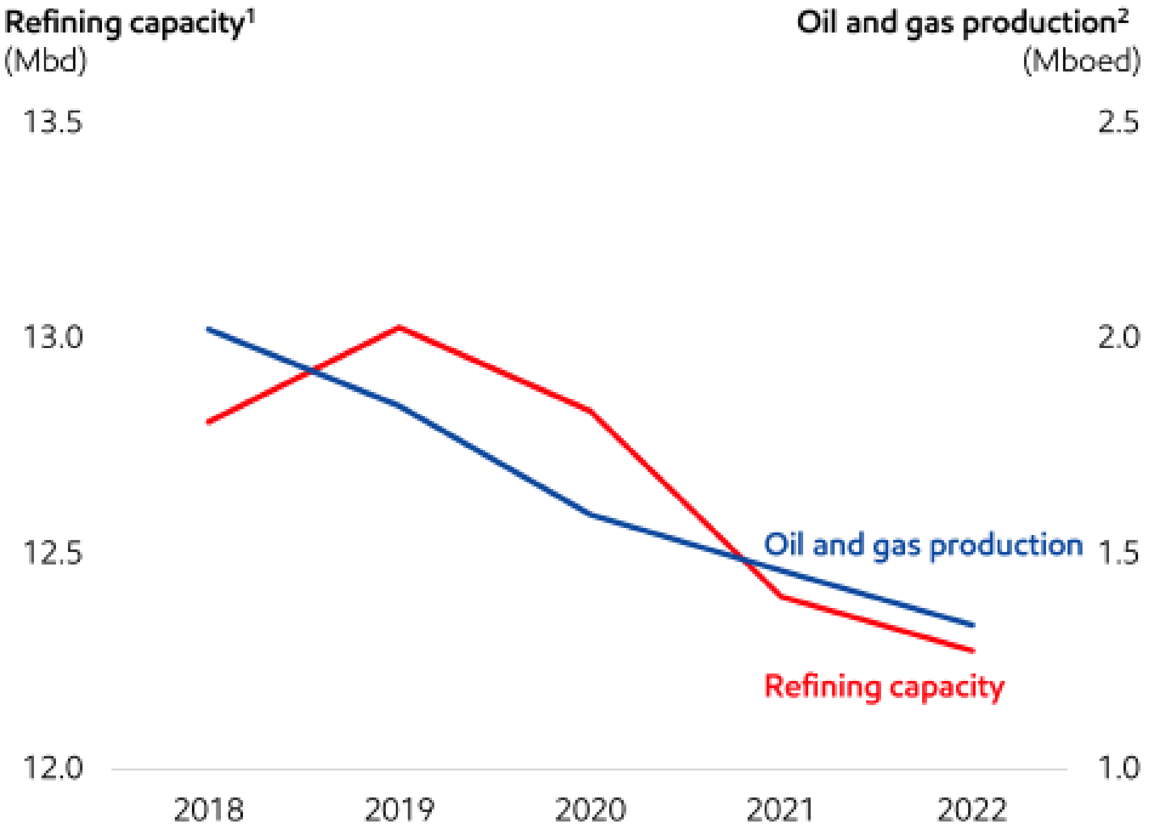
Shell to 'evaluate' 25 bln pound British investments after windfall tax

LONDON, Nov 21 (Reuters) - Shell (SHEL.L) said on Monday it will evaluate plans to spend up to 25 billion pounds in Britain over the next decade following the government's decision to increase a windfall tax on oil and gas producers.

"We're going to have to evaluate each project on a case by case basis," said Shell's UK country chair David Bunch told the Confederation of British Industry's annual conference in Birmingham. "When you tax more you're going to have less disposable income in your pocket, less to invest."

Counterproductive European tax deters investment and could further undermine region's energy security

Europe's oil and gas industry has been contracting

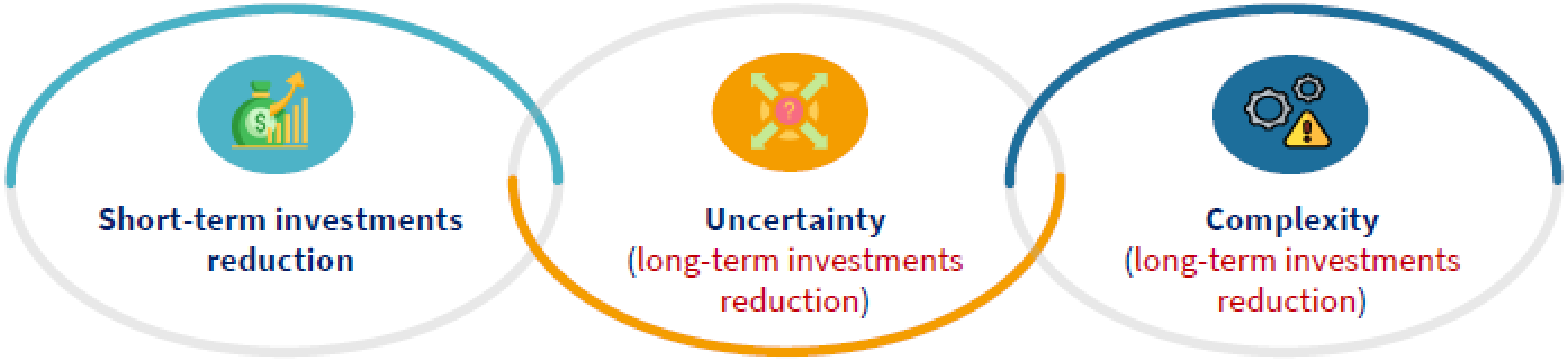


- Oil and gas production is down ~700 Koebd, while refining capacity is down ~500 Kbd versus 2018
- Competitive, predictable, and rational fiscal policy is required to attract development investment and to improve energy security
- Potential long-term negative effects of E.U. energy policy:
  - Decreasing local investments
  - Reducing competitiveness of regional refineries
  - Increasing imports
  - Raising energy prices for consumers
  - Reducing prospects of improved energy security

See Supplemental Information for footnotes.

WINDFALL PROFIT TAXES CREATE UNCERTAINTY AND COMPLEXITY, UNDERMINING LONG TERM INVESTMENTS

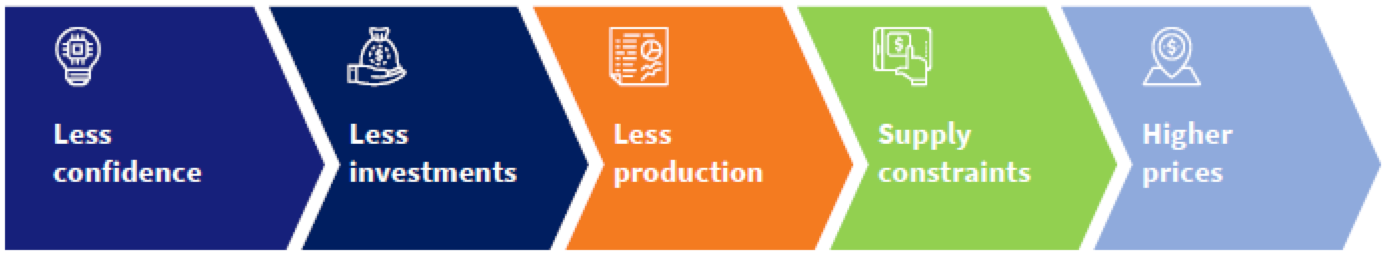
A summary view of the effects of the windfall profit taxes (illustrative)



Windfall profit taxes **reduce expected investment** undermining the capability to reach decarbonization targets

Windfall profit taxes **reduce future investment** because prospective energy investors will **internalize the likelihood of potential taxes when making investment decisions**

Double taxation on the same energy companies and on the same fiscal period, as the tax base of the solidarity contribution is **already part of the tax base of the corporate income tax,** making investors **losing confidence** in the tax system



Challenge to the EU Windfall Profits Tax

Legal Considerations

- **We are asking the European Courts to annul the windfall profits tax, but not other elements of the Regulation**
  - Not the requirements for Member States to cut electricity demand
  - Not the “mandatory cap on market revenues”, which imposes a limit on “inframarginal” electricity generators

- **The EU Treaties do not empower to impose an EU-wide direct income tax**
  - The EU has never previously imposed a direct income tax; this power lies with the Member States
  - The “solidarity contribution” is in fact a tax: it applies to profits (i.e. income) of a narrow base of companies, at an identified rate (33% or more), “in parallel to the regular corporation taxes levied by Member States”

- **Article 122(1) (exceptional emergency powers) is not appropriate**
  - The solidarity tax cannot remedy the cause of the shortage of energy supply, which was the aim of the Regulation
  - No “solidarity” among Member States: the tax is paid by companies in a Member State, to that Member State, for use in that Member State

Challenge to the EU Windfall Profits Tax

Legal Considerations

- **The Windfall Profits Tax infringes fundamental rights**
  - The EU Charter's fundamental rights guarantee equal treatment, property rights and the right to conduct a business
  - EU general principles of law protect against retrospective legislation

- **The process to pass the 'Solidarity Contribution' was legally flawed**
  - Rushed through the EU procedures, using an inappropriate legal basis that enabled Qualified Majority Voting, instead of unanimity
  - Two Member States voted against it (Poland and Slovakia) and others expressed reservations, including about the legal basis
  - European Parliament requested co-decision: This "requires full democratic legitimacy and accountability"

WINDFALL TAXES ARE NO SOLUTION TO OUR ENERGY CRISIS

Supporting consumers and businesses through the energy crisis is essential

- Part of the solution is to reduce demand.
- Equally important is to increase the supplies of energy – both renewable and conventional.
- Substantial investments are needed across all energy sectors if prices are to return to more affordable levels.

Governments need to help, not hinder those investments

- Businesses need confidence about a stable and predictable investment environment, especially when billions in investments are needed to support the transition to a net zero economy.
- Retroactive 'windfall' taxes deter companies from investing.
- Windfall profits taxes may look politically attractive for the short-term, but the unintended longer-term consequence is likely to be sustained high energy prices, lower energy security and less competitive European industry.