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PROPOSAL

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Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

Delegations will find attached document COM(2023) 147 final.

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2023/0076 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

(Text with EEA relevance)

{SWD(2023) 58 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

• Reasons for and objectives of the proposal

1.1. Policy context

Energy prices significantly increased throughout 2021 and 2022. This resulted from reductions in gas supply, particularly after the start of Russia's war against Ukraine and the weaponisation of energy as well as from domestic shortfalls in hydropower and nuclear power. The price rises also resulted from increased energy demand, as the global economy picked up after the COVID-19 pandemic. These price rises were rapidly felt by households, industry and businesses across the EU, and governments immediately took steps to mitigate them. At the European level, the EU swiftly provided an energy prices toolbox[1] with measures to address high prices, in particular for the most vulnerable consumers (including income support, tax breaks, gas saving and storage measures), as well as the REPowerEU plan[2] with further measures and funding to boost energy efficiency and renewable energy in order to reduce dependence on Russian fossil fuels. This was followed by the creation of a temporary State Aid regime[3] to allow certain measures to soften the impact of high prices, a strong gas storage regime[4], effective demand reduction measures for gas[5] and electricity[6], faster renewable energy and grid permitting processes[7], and price limiting regimes to avoid windfall profits in both the gas and electricity markets[8].

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1 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - Tackling rising energy prices: a toolbox for action and support, COM(2021) 660 final.

2 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU Plan, COM(2022)230.

3 Communication from the Commission Temporary Crisis Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia C 131 I/01, C/2022/1890.

4 Regulation (EU) 2022/1032 of the European Parliament and of the Council of 29 June 2022 amending Regulations (EU) 2017/1938 and (EC) No 715/2009 with regard to gas storage, OJ L 173, 10.6.2022, p. 17.

5 Council Regulation (EU) 2022/1369 of 5 August 2022 on coordinated demand-reduction measures for gas, OJ L 206, 8.8.2022, p. 1.

6 Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261, 7.10.2022, p. 1.

7 Council Regulation (EU) 2022/2577 of 22 December 2022 laying down a framework to accelerate the deployment of renewable energy, OJ L 335, 29.12.2022, p. 36.

8 Council Regulation (EU) 2022/1854 of 6 October 2022 on an emergency intervention to address high energy prices, OJ L 261, 7.10.2022, p. 1.

These short-term measures helped Member States to deal with the immediate fall-out of the energy crisis. However, the crisis also showed how exposed consumers and industries are and our lack of resilience to energy price spikes. The impact of fossil fuel-based generation on setting electricity prices was seen as excessive by businesses and citizens, while Member States' ability to cushion short term prices with longer term contracts appeared inadequate. For this reason, the European Commission President announced in the 2022 State of the Union Address[9] the need for a fundamental reform of the electricity market design.

Whilst the EU's internal energy market delivers huge gains and growth across Europe, the recent energy crisis has highlighted that the energy market design's short-term focus can distract from broader, longer-term goals. The reflection of short-term prices in consumers bills led to price shocks where energy bills of many consumers tripled or quadrupled, even as the costs of wind and solar power were declining; the sudden exposure to volatile and high prices triggered some supplier bankruptcies; many industrial enterprises in energy intensive sectors were obliged to shut down. Therefore, the proposal includes a set of measures aimed to create a buffer between short-term markets and electricity bills paid by consumers, in particular by way of incentivizing longer term contracting, to improve the functioning of short-term markets to better integrate renewables and enhance the role of flexibility and to empower and protect consumers.

The recent price volatility has also highlighted the lack of flexibility in the electricity grid, with prices set too often by gas-fired generation and with a general lack of low carbon flexible supply, demand response and energy storage. As more wind and solar power enter the system, low-carbon flexible technologies will be needed to balance the variable supply with variable demand. In parallel with this proposal, the Commission is making recommendations for the advancement of storage innovation, technologies, and capacities.

More broadly, the sensitivity of the electricity price to fossil fuel prices highlighted the need to speed up the deployment of renewables together with the flexibility of the power system to displace fossil fuels. REPowerEU provides such a boost to renewable energy and with it, a boost to economic growth and quality jobs creation. It builds on the European Green Deal's drive to improve European competitiveness through innovation and the transition to a net zero economy and is closely aligned with the Commission's Green Deal Industrial Plan. To facilitate the investments needed in the face of recent price volatility, uncoordinated

[9] SPEECH/22/5493.

regulatory interventions and grid and regulatory barriers to entry, fundamental reform is needed. Finally, in the Report on the final outcome of the Conference on the Future of Europe, citizens asked the EU institutions to take measures to "Enhance European energy security, and achieve the EU's energy independence" and to 'Reduce dependency of EU from foreign actors in economically strategic sectors', including energy[10]

1.2. Objectives of the proposal

The proposal is addressing consumer, industry and investors' concerns over exposure to volatile short-term prices, driven by high prices of fossil fuels. It will optimize the electricity market design by complementing the short-term markets with a greater role for longer-term instruments, allowing consumers to benefit from more fixed priced contracts, and facilitating investments in clean technologies. Ultimately, it will mean that less fossil fuel generation is needed and will lead to lower prices for consumers during future fossil fuel crisis due to the low operational costs of renewable and low carbon energy.

The proposal is putting forward measures to protect consumers from such volatility, empower them with greater contract choice and more direct access to renewable and low carbon energy. To improve investment conditions for businesses, in particular those pursuing decarbonisation pathways. it proposes measures to counter exposure to short term price spikes through power purchase agreements and more prudential obligations for energy suppliers. It also proposes measures to improve the way variable renewable and low carbon energies are integrated into the short-term market. This includes measures boosting the use of demand response and storage, among other forms of non-fossil flexibility. The proposal also improves and clarifies access to longer term contracts for developers (both State supported such as contracts for difference, and private, such as power purchase agreements) in order to provide secure, stable revenues for renewable and low carbon energy developers and bring down risk and capital costs while avoiding windfall profits in periods of high prices.

Whilst the current market design has over many decades delivered an efficient, increasingly integrated market, the energy crisis has highlighted a number of shortcomings relating to: (i) insufficient tools to protect consumers, including businesses, against high short term prices; (ii) the excessive influence of fossil fuel prices on electricity prices and the failure for low cost renewables and low carbon energy to be better reflected in electricity bills; (iii) the impact of extreme price volatility and regulatory interventions on investment; (iv) the lack of

[10] Report on the final outcome of the Conference on the Future of Europe Report - Proposals 3 and 17

sufficient non-fossil flexibility (such as storage or demand response) that could reduce dependence on gas-fired generation; (v) the limited choice of supplier contract types; (vi) the difficulties to directly access renewable energy though energy sharing; and (vii) the need for robust monitoring of the energy market to better protect against market abuse.

To protect consumers from volatile prices, the proposal will provide for the right to fixed price contacts as well as dynamic price contracts, the right to multiple contracts and to better and clearer contract information. Consumers will be offered variety of contracts that best fits their circumstances. In this way, consumers, including small businesses, can lock in secure, long-term prices to mitigate the impact of sudden price shocks, and/or they may choose to have dynamic pricing contracts with suppliers if they wish to take advantage of price variability to use electricity when it is cheaper (e.g., to charge electric cars or use heat pumps). Such a combination of both dynamic and fixed pricing allows to keep market incentives for consumers to adjust their electricity demand, while providing more certainty also for those who wish to invest in renewable energy sources (rooftop solar panels for instance) and stability of costs. In addition to the existing protection framework for energy poor and vulnerable consumers, the proposal will also provide access to regulated retail prices for households and SME consumers in the event of a crisis and stabilise the supply industry by requiring that suppliers make more effort to guard against high price spikes by making greater use of forward contracts with generators (locking in future prices) and by requiring Member States to establish a supplier of last resort regime. The proposal will empower consumers by creating the right to share renewable energy directly, without the need to create energy communities. Greater energy sharing (e.g., sharing surplus roof top solar power with a neighbour) can improve the use made of low cost renewable energy and provide greater access to direct use of renewable energy for consumers who might not otherwise have such access.

To enhance stability and predictability of the cost of energy, thereby contributing to the competitiveness of the EU economy facing excessive volatile prices, the proposal intends to enhance market access to more stable longer-term contracts and markets. Power purchase agreements (PPAs) - long-term private contracts between a generator (typically renewable or low carbon) and a consumer – can protect against price volatility, but they are currently mostly available only to large energy consumers in very few Member States. A barrier to the growth of this market is the credit risk that a consumer will not always be able to buy the electricity over the whole period. To address this, Member States should ensure that

instruments to reduce the financial risks associated to off-taker payment default in the framework of PPAs, including guarantee schemes at market prices, are accessible to companies that face entry barriers to the PPA market and are not in financial difficulty. To further encourage the growth of the market for such agreements, renewable and low carbon energy project developers participating in a public support tender should be allowed to reserve a share of the generation for sale through a PPA. In addition, Member States should endeavour to apply in some of these tenders' evaluation criteria to incentivise the access to the PPA market for customers that face entry barriers. Finally, the obligation on suppliers to hedge appropriately may also boost demand for PPAs (which are a way of locking in future prices).

Some forms of public support guarantee the energy producer a minimum price by the government but allow for the producer to nevertheless earn the full market price even when this market price is very high. With the recent high prices much (cheap) publicly supported energy has been receiving these high market prices. To curb this and so stabilise prices, investment support should be structured as “two-way” (two-way contract for difference), which set a minimum price but also a maximum price, so any revenues above the ceiling are paid back. The proposal will apply to new investments for the generation of electricity, which include investments in new power-generating facilities, investments aimed at repowering existing power-generating facilities, investments aimed at extending existing power-generating facilities or at prolonging their lifetime. Moreover, the proposal will require that such money is then channelled to support all electricity consumers in proportion to their consumption to mitigate the effect of high prices.

A further means of guarding against volatile prices is to use long term contracts that lock in future prices (“forward contracts”). This market shows low liquidity in many Member States but could be boosted across the EU, so that more suppliers or consumers can guard against excessively volatile prices over longer periods of time. The proposal will create regional reference prices via a hub to increase price transparency and oblige system operators to allow transmission rights longer than a year, so that if a forward contract is between parties across regions or borders, they can ensure transmission of the electricity.

Finally, to ensure markets that behave competitively and prices are set transparently, regulators’ ability to monitor energy market integrity and transparency will be enhanced.

The third objective is to **boost renewable energy investment,** in order to ensure that deployment triples, in line with European Green Deal goals. This will be achieved partly by

improving the markets for long term contracts. Power purchase agreements and contracts for difference not only provide consumers with stable prices, they also give renewable energy suppliers reliable revenues. This lowers their financial risk and greatly reduces their cost of capital. This creates a virtuous circle where stable revenues lower costs and boost demand for renewable energy.

Renewable energy is also a better investment when its ability to produce power is not curtailed due to technical constraints in the system. The more flexible the system is (generation that can rapidly turn on or off, storage that can absorb or put power onto the system, or responsive consumers who can increase or decrease their demand for power) the more stable prices can be and the more renewable energy the system can integrate. For this reason, the proposal requires Member States to assess their needs for power system flexibility, establish objectives to deliver on these needs. Member States can design or redesign capacity mechanisms in order to promote low-carbon flexibility. Moreover, the proposal opens the possibility for Member States to introduce new support schemes for non-fossil flexibility such as demand side response and storage.

System operators should also play an enhanced role integrating renewables into the grid, partly by increasing transparency surrounding availability of grid connection capacity. First, this clearer information would enhance renewable energy developers' ability to develop renewables in areas where the grid is less congested. Second, renewable energy can be more efficiently traded and balanced in the system if trades between market participants can take place closer to "real time". If offers to supply electricity are made minutes before consumption rather than hours before consumption, the offers from wind and solar power producers are more accurate, more wind and solar power can be consumed and the "imbalance costs" of the system are reduced. Thus, trading deadlines will be brought closer to real time.

Consistency with existing policy provisions in the policy area

The proposed initiative is strongly linked and complementary to the legislative proposals brought forward in the context of the European Green Deal Package and speed up the decarbonisation objectives laid down in REPowerEU Plan, in particular as regards the proposal to revise the Renewable Energy Directive ("RED II"), which is the main EU instrument dealing with the promotion of renewable energy. The proposed initiative is complementary in that it aims to enable the acceleration in the uptake of renewable energy. The proposal seeks to ensure more stable long-term sources of revenue to unleash further

renewable and low carbon energy investments, while improving the functioning of short-term markets, which are key for the integration of renewables in the electricity system. In addition, the proposal seeks to enable energy sharing to allow consumers to engage in the market and help to speed up the energy transition.

Reducing energy consumption through price signals, energy efficiency measures or voluntary efforts can often be the cheapest, safest and cleanest way to reduce our reliance on fossil fuels, to support security of supply and to reduce our energy bills. The proposal will facilitate the active participation of the consumers in the market and the development of their demand response. It will also enable non-fossil flexibility such as demand side flexibility and storage to compete on a level playing field so that the role of natural gas in the short-term market in providing flexibility is progressively reduced. Therefore, the proposal is in line with the proposed increase of the 2030 target for energy efficiency to 13%, as set out in the proposed amendments to Renewable Energy, Energy Performance of Buildings and Energy Efficiency Directives[11] accompanying the REPowerEU Plan[12].

There is also an important link between the proposal and the Energy Performance of Buildings Directive which is the main EU instrument to help reach the building and renovation goals set out in the European Green Deal. The proposal is strongly linked in particular to provisions on sub-metering and demand response in addition to the Commission's proposal, as part of the European Green Deal Package and expressed under the EU Solar Strategy Communication, on the gradual mandatory integration of solar photovoltaic in order to make public, commercial and residential buildings climate neutral.

- **Consistency with other Union policies**

The proposal's objectives to protect and empower consumers, improve competitiveness of EU industry and boost renewables and low carbon investment are wholly consistent with the framework of the European Green Deal and coherent and complementary to current initiatives, including the legislative proposal for a "Net-zero Industry Act" which is being adopted in parallel. It responds to the issues that were identified in the Commission's Communication laying out a "Green Industrial Plan for the net-zero age" issued on 1 February

[11] Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2018/2001 on the promotion of the use of energy from renewable sources, Directive 2010/31/EU on the energy performance of buildings and Directive 2012/27/EU on energy efficiency, COM(2022) 222 final.

[12] Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - REPowerEU Plan, COM(2022) 230 final.

2023[13], namely that the competitiveness of many companies has been severely weakened by high energy prices and that long-term price contracts could play an important role to enable electricity users benefit from more predictable and lower costs of renewable power. Last but not least, the legislative proposal is complementary to the ongoing revision of relevant financial market regulations such as the Market Abuse Regulation[14]. The proposal also builds on the Council Recommendation on ensuring a fair transition towards climate neutrality whereby Member States are invited to continue to mobilise public and private financial support to invest into renewable energy, tackle mobility challenges and promote cost-saving opportunities linked to the circular economy[15].

2. LEGAL BASIS, SUBSIDIARITY AND PROPORTIONALITY

• Legal basis

The proposal is based on Article 194(2) of the Treaty on the Functioning of the European Union (TFEU), which provides the legal basis for proposing measures aiming inter alia to ensure the functioning of the energy market, promote energy efficiency and energy saving and the development of new and renewable forms of energy.[16] In the field of energy, the EU has a shared competence pursuant to Article 4(2)(i) TFEU.

• Subsidiarity (for non-exclusive competence)

The need for EU action

The unprecedented nature of the energy price crisis has shone a spotlight on EU electricity markets. Despite the growing shares of low-cost renewables electricity across the EU, there is a continuing influence of fossil-fuel generated electricity on overall energy bills. Households and businesses across the EU have experienced skyrocketing energy prices during the crisis.

This is an issue of EU-wide relevance which can only be addressed with action at EU level. The increased integration of EU electricity markets requires closer coordination between national actors, also in the context of market monitoring and surveillance. National policy

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13 Communication from the Commission to the European Parliament, the European Council, the Council, the European Economic and Social Committee and the Committee of the Regions - A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final.

14 Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L 173, 12.6.2014, p. 1.

15 Council Recommendation of 16 June 2022 (2022/C 243/04)

16 Article 194(1) TFEU.

interventions in the electricity sector have a direct impact on neighbouring Member States due to energy interdependence, grid interconnections and ongoing electricity market integration. To preserve the functioning of the electricity system and cross-border trade and investments and to accelerate, in a coordinated way, the energy transition towards a more integrated and more energy-efficient energy system based on renewable generation, a common approach is needed.

The amendments proposed set out a balance between obligations and flexibility left to the Member States on how to achieve the main objectives pursued of ensuring that the lower cost of renewable electricity will be reflected in consumer bills and of boosting the deployment of renewable energy.

Furthermore, the objective of the proposed measures can only be achieved by action at EU level, not at individual Member States' level, since the proposed action requires changes to the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation (EU) 2019/943 and the Electricity Directive (EU) 2019/944 as well as to existing REMIT framework.

- **EU added value**

EU action to address the shortcomings of the current electricity market design brings added value because it is more efficient and effective than individual Member States' actions, thus avoiding a fragmented approach. The measures proposed to address the shortcomings identified will be more ambitious and cost-effective if driven by a common legal and policy framework. In addition, action at Member State level would only be possible within the constraints of the existing EU-wide framework for the electricity market design as set out in the Electricity Regulation and Electricity Directive as well as REMIT Regulation and not be able to achieve the necessary changes to that framework. Consequently, the objectives of this initiative cannot be achieved only by Member States themselves and this is where action at EU-level provides an added value.

- **Proportionality**

The proposed amendments to the Electricity Regulation, the Electricity Directive, the REMIT Regulation and the ACER Regulation are considered proportionate.

The proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic

impacts are necessary and proportionate to achieve the objective of incentivising the use of such long-term contracts and ensuring that the energy bills of European households and companies as well as the revenues of non-fossil fuel technologies with low variable costs become more independent from the fluctuation of prices in short-term markets and thus more stable over longer periods of time.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered necessary in order to achieve the envisaged objectives of ensuring better integration of renewable and low carbon energy and reducing dependency on fossil fuels for flexibility, and ultimately reaching carbon neutrality in the Union with lower costs for consumers. They are also proportionate to these objectives, since the impact on businesses appears minimal compared to the current framework and the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

It is also proportionate with the objectives pursued not to envisage measures amending existing provisions in the Electricity Regulation and the Electricity Directive where any issues identified with regard to existing provisions can be addressed through their manner of application or implementation. One such instance relates to the measures concerning resource adequacy in Chapter IV of the Electricity Regulation, in particular, the process for Member States to introduce capacity mechanisms, which could be simplified without amending the relevant provisions.

The measures envisaged to strengthen consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators. However, the additional burdens are necessary and proportionate to achieve the objective of ensuring consumers have access to better information and variety of offers, decoupling their electricity bills from short term movements on energy markets and rebalancing the risk between suppliers and consumers.

The measures envisaged to improve the REMIT framework may increase reporting obligations for market participants due to a broader scope of REMIT. These measures are necessary to achieve the objective of increasing transparency and monitoring capacities and ensuring more effective investigation and enforcement of cross-border cases in the EU so that consumers and market participants have confidence in the integrity of energy markets, prices reflect a fair and competitive interplay between supply and demand and no profits can be

drawn from market abuse. They are also proportionate to that objective, since the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

Finally, the overall package of measures proposed is considered appropriate given the overarching imperative of achieving climate neutrality at the least cost for consumers while ensuring security of supplies.

- **Choice of the instrument**

The proposal will amend the Electricity Regulation, the Electricity Directive, the REMIT Regulation, the ACER Regulation and the Renewables Energy Directive. Given that the proposal aims to add a limited set of new provisions and amend a limited set of existing provisions in these instruments, the recourse to an amending act is adequate. For the same reason, it also appears appropriate to use the instrument of an amending regulation to introduce amendments both to existing regulations and existing directives.

3. STAKEHOLDER CONSULTATIONS AND STAFF WORKING DOCUMENT

- **Stakeholder consultations**

In preparation for the present initiative, the Commission has conducted a public consultation from 23 January 2023 to 13 February 2023. The consultation was open to everybody.

The Commission received 1369 replies to this consultation. More than 700 of those have come from citizens, around 450 from businesses and business associations, around 40 from national or local administrations or from national regulators and around 70 from network operators. Also, around 20 energy communities, 15 trade unions and 20 consumers organisations participated. A significant number of NGOs, think tanks and research or other academic organisations submitted responses as well. An overview of stakeholders' opinions is available in the Staff Working Document accompanying this legislative initiative.

In addition, the Commission organised an online targeted stakeholder consultation meeting on 15 February 2023 which counted with the participation of around 70 market actors, non-governmental organisations, network operators, ACER and national regulators, think tanks and academics. The consultation overall highlighted that the stakeholders considered that:

– Short-term markets and the pricing mechanism based on marginal pricing should be preserved, as they function well and provide the right price signals. Short-term (day-ahead and intraday) markets are well-developed, and they result from years of implementation of EU energy legislation.

– Short-term markets need to be complemented by instruments incentivizing longer term price signals, such as the ones indicated in consultation by the Commission, in particular power purchase agreements ('PPA'), contracts for difference, and enhanced forward markets. The right balance between the different tools should be established. Nonetheless, there should not be mandatory schemes, and the freedom of choosing the relevant contracts should be preserved.

– The benefits of non-fossil flexibility solutions such as demand response and storage were acknowledged, especially in the context of an increasing share of renewables. Their market participation should be facilitated.

– The future electricity markets will have to be adapted to a high share of renewable energy. Furthermore, there should be more emphasis on the local dimension and grid development. These challenges could be addressed by the solutions presented in the public consultation.

– Consumer protection is essential, as is affordability of energy, but preserving the signals for demand response is equally important. Emerging solutions such as energy communities, self-consumption, energy sharing should be enabled and incentivized.

• **Staff Working Document**

Given the urgency of the initiative, a Staff Working Document has been produced instead of an impact assessment. The Staff Working Document underpinning the present proposal sets out the explanation and rationale behind the Commission's proposals for a structural response to the high energy prices experienced by households and businesses and to ensure secure, clean and affordable energy for households and businesses into the future as well as presents the available evidence of relevance for the proposed measures.

The Staff Working Document concludes that the package of proposed reforms is expected to significantly improve the structure and functioning of the European electricity market. It is another building block to enable the delivery of the Green Deal objectives and in addition it takes stock of the shortcomings revealed by the energy crisis and seeks to address them.

The document shows that the reform will contribute to protecting and empowering consumers currently facing high and volatile prices by creating a buffer between them and short-term markets. This proposal will decouple the high prices of fossil-fuel technologies operating in the electricity market from the energy bills of consumers and businesses. More long-term

contracting opportunities in the form of PPAs, contracts for difference and forward markets will ensure that the part of the electricity bill exposed to short-term markets can be greatly reduced. In addition, including a hedging obligation on suppliers and an obligation to also offer fixed price contracts will significantly increase the options to reduce the exposure of price volatility for electricity bills. Consumers will also have better information on offers before signing up and Member States will have an obligation to establish suppliers of last resort. Besides, they can enable access to regulated retail prices in a crisis. The right to share energy is a new feature that will empower consumers and support the decentralised rollout of renewable energy as it grants consumers more control over their energy bills.

The Staff Working Document explains how this reform will also enhance the competitiveness of EU industry in a way that is fully complementary to the Net-zero Industry Act. Member States will be required to ensure that the right conditions exist for PPA markets to develop, thereby providing industry access to affordable and clean electricity over the long-term. The improvements to the forward markets will provide far greater access to cross-border renewable energy for industries and suppliers up to three years in advance, a significant improvement compared to today. Overall, public support schemes for renewable energy will increase the energy independence in Member States and the penetration of renewables into the system while supporting local jobs and skills.

The document demonstrates that this reform will accelerate the rollout of renewables and tap into the full potential of firm generation capacity and flexibility solutions to enable Member States to integrate ever higher levels of renewables. The Commission proposes that Member States assess their need for power system flexibility and allows the introduction of new support schemes for demand response and storage. The proposal also introduces extra possibilities for renewables to trade closer to real time at cross-border and national level. In this way, the market can better support the integration of renewables and the business case for flexibility solutions that can contribute to security of supply.

Finally, the Staff Working Document describes how this proposal responds to the request from the European Council to assess ways of optimising the functioning of the electricity market design in the context of the energy crisis. It aims to protect consumers, creating a buffer between them and short-term electricity markets through longer-term contracting and to make those short-term markets work in a more efficient way for renewables and flexibility solutions, with better regulatory oversight. This proposal ensures that the market rules remain

fit for purpose to drive the cost-effective decarbonisation of the electricity sector and increase its resilience to energy price volatility.

- **Collection and use of expertise**

The preparation of the present legislative proposal and the Staff Working Document is based on a large body of material, which is referenced in the footnotes in the Staff Working Document, and on the responses to the public consultation.

- **Fundamental rights**

The present proposal may have an impact on a number of fundamental rights established by the Charter on Fundamental Rights of the EU, in particular: the freedom to conduct a business (Article 16) and the right to property (Article 17). As explained above, however, to the extent that the proposed measures limit the exercise of these rights, these impacts are considered necessary and proportionate to achieve the objectives of the proposal and therefore constitute legitimate limitations of such rights as allowed under the Charter.

On the other hand, the proposal enhances the protection of fundamental rights, such as the respect for private and family life (Article 7), the right to protection of personal data (Article 8), the prohibition of discrimination (Article 21), access to services of general economic interest (Article 36), the integration of a high level of environmental protection (Article 37) and the right to an effective remedy (Article 47), in particular through a number of provisions concerning consumer empowerment, rights and protection.

- **Regulatory fitness and simplification**

The proposed amendments to the Electricity Directive, the Electricity Regulation, the REMIT Regulation and the ACER Regulation focus on what is considered necessary to address the shortcomings of the current electricity market design in the context of the energy crisis and to contribute in a cost-effective manner to the Union's climate ambition. They do not constitute a full revision of these instruments.

The proposal may increase administrative requirements for national administrations and undertakings, albeit in a proportionate way as explained above. For example, the proposed measures to incentivise the use of long-term contracts such as power purchase agreements and two-way contracts for differences may lead to increased administrative costs and burden for undertakings and national administrations. However, the envisaged economic impacts will positively benefit businesses and consumers.

The measures envisaged to improve the liquidity and integration of markets may also generate some short-term impact on businesses, as these would have to be adapted for new trading arrangements. These are however considered minimal compared to the current framework, as the economic gains of the reform would largely surpass any short or long-term administrative reorganisation.

The measures envisaged to strengthened consumer empowerment, rights and protections will expand duties and obligations placed on suppliers and network operators with the objective to improve choice, increase protection and facilitate active market participation by consumers, notably households. However, the additional burdens are minimal because these frameworks are being rolled out across Europe and therefore streamlining of rules is needed.

The measures envisaged to improve the REMIT framework may increase reporting obligations on certain market participants, albeit in a proportionate way. These are however considered minimal compared to the current framework as the gains in terms of quality of market monitoring and surveillance would surpass any short or long-term administrative costs.

4. BUDGETARY IMPLICATIONS

The budgetary impact associated to the proposal on improving the EU's electricity market design concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, for the new tasks to be carried out by ACER 4 additional full time equivalent (FTE) for ACER from 2025 onwards, as well as corresponding financial resources will be required. DG Energy's workload will increase by 3 FTE.

The budgetary impact associated to the proposal amending REMIT concerns the resources of the European Union Agency for the Cooperation of Energy Regulators (ACER) and of DG Energy which are described in the Legislative Financial Statement accompanying the proposal. Essentially, the new tasks to be carried out by ACER, especially regarding the enhanced investigatory powers require a phasing in of 25 additional full time equivalent (FTE) in ACER from 2025, as well as corresponding financial resources, although most of the additional staff will be funded by fees. To this end Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to ACER for tasks under REMIT will need to be adapted. DG Energy's workload will increase by 2 FTE.

5. OTHER ELEMENTS

- **Implementation plans and monitoring, evaluation and reporting arrangements**

The Commission will monitor the transposition and compliance of Member States and other actors with the measures that shall be ultimately adopted and take enforcement measures if and when required. For monitoring and implementation purposes, the Commission will notably be supported by ACER, in particular in relation to the REMIT Regulation. The Commission will also liaise with ACER and the national regulatory authorities in relation to the Electricity Regulation and the Electricity Directive.

Moreover, to facilitate the implementation, the Commission will be available for bilateral meetings and calls with Member States in case of specific questions.

- **Explanation of the specific provisions of the proposals**

The amendments concerning the Electricity Regulation provide clarifications to the scope and subject matter of the Regulation, emphasising the importance of undistorted market signals to provide for increased flexibility as well as the role of long-term investments to mitigate the volatility of short-term market prices on the electricity bills of consumers including energy intensive industries, SMEs and households. It clarifies certain main principles for trading in the day-ahead and intraday markets. It provides for new rules concerning the procurement by TSOs of demand response in the form of a peak shaving product and rules allowing transmission system operators and distribution system operators to use data from dedicated metering devices. It sets out new rules concerning forward electricity markets, to improve their liquidity. It includes new rules aiming to clarify and incentivise the role and use of longer-term contracts in the form of power purchase agreements and two-way contracts for difference. It provides for new rules regarding the assessment of the flexibility needs by Member States, the possibility for them to introduce flexibility support schemes and design principles for such flexibility support schemes. It also introduces new transparency requirements for transmission system operators as regards the capacity available for new connections in the grid.

The amendments concerning the Electricity Directive provide for new rules on the protection and empowerment of consumers. The amendment regarding Free Choice of Supplier introduces new requirements to ensure that customers are able to have more than one supplier

on their premises, by enabling multiple meters (sometimes called submeters) for a single connection point.

The amendments regarding consumer empowerment and protection ensure that customers are offered a variety of contracts that best fits their circumstances, by ensuring that all customers have a least one fixed term, fixed price offer. Furthermore, customers must be provided with clear pre-contractual information in relation to these offers.

A new right for households and small and medium sized enterprises is also established to participate in energy sharing- that is the self-consumption by active customers of renewable energy generated or stored offsite either from facilities they own, lease, rent in whole or in part or which has been transferred to them by another active customer.

Important new protections for customers are also introduced to ensure continuous supply of electricity– including the requirement for Member States to appoint suppliers of last resort who take responsibility for the customers of failed suppliers and protection from disconnection for vulnerable customers. Suppliers will also be required to put in place risk management to limit the risk of failure, by implementing appropriate hedging strategies. These will be overseen by national regulatory authorities.

The amendments to the Electricity Directive introduce new transparency requirements for distribution system operators as regards the capacity available for new connections in the grid. It clarifies the role of regulatory authorities regarding the single allocation platform established in accordance with Regulation (EU) 2016/1719.

The amendments concerning REMIT Regulation adapt the scope of REMIT to current and evolving market circumstances by inter alia extending the scope of data reporting to new electricity balancing markets and coupled markets as well algorithmic trading. It ensures stronger, more established and regular cooperation between energy and financial regulators, including ACER and ESMA regarding derivative wholesale energy products. It will as well improve process for the collection of inside information and market transparency by enhancing the oversight of ACER and adjustment of inside information definition. Amendments to REMIT Regulation enhance supervision of reporting parties such as Registered Reporting Mechanisms (RRMs) and persons professionally arranging transactions (PPATs). Amendments improve data sharing possibilities between ACER, relevant national authorities and the Commission. REMIT amendment introduces stronger role for ACER in investigations of significant cross-border cases to fight against the REMIT breaches. It also

sets-out the framework for harmonisation of fines set by regulatory authorities at national level.

The amendments concerning the ACER Regulation aim to clarify the role of ACER as regards the single allocation platform established in accordance with Regulation (EU) 2016/1719 and as regards the new rules introduced in the Electricity Regulation concerning forward markets and flexibility support schemes. It also clarifies the role and competences of ACER in accordance with the amendment to REMIT Regulation. The amendment RED II aims to clarify the scope of application of the rules concerning the types of direct price support schemes for renewable energy sources that Member States may introduce.

2023/0076 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against attempts of market manipulation, Regulation (EU) No 1227/2011 should be amended to further increase insufficient transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.

(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council[17], including with respect to

[17] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament

the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.

(3) The definition of inside information should also be adjusted to mirror Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.

(4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

(5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.

(6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the 'Agency' or 'ACER') should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. This should include the possibility for ACER to publish information on organised market places, IIPs, RRMs according to applicable data protection laws in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.

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and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

(7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 shall be duly authorized pursuant to the requirements of that Directive.

(8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale energy markets. Many market participants use algorithmic trading and high frequency algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.

(9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of utmost importance to ensure effective monitoring and detection of potential breaches to achieve the objective of Regulation (EU) No 1227/2011. Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for it to effectively carry out its tasks and functions.

(10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, new balancing markets, contracts for balancing markets and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency. Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.

(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.

(12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRMs should be authorised by the Agency. The RRMs should at all times comply with the conditions for authorisation and data protection law. The Agency should also establish a register of all RRMs in the Union.

(13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting.

(14) Persons professionally arranging and executing transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions.

(15) Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management foresees the possibility of third country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market coupling operator uses a specific algorithm to match bids and offers in an optimal manner, this may result in orders to trade being placed in a third

country participating in the Union single day-ahead and intraday coupling but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product pursuant to this Regulation.

(16) In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the Agency should collect all the LNG market data that are necessary to establish a daily LNG price assessment. The price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.

(17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and reduce the burden imposed on market participants. Therefore a clear legal basis should be provided for such delegation. National regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority. Introducing specific conditions and limiting the scope for the delegation to what is necessary for the effective supervision of cross-border market participants or groups should be possible. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.

(18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect the type of the breaches, taking into account the *ne bis in idem* principle. Administrative sanctions, penalty payments and supervisory measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy market requires a consistent approach among national regulatory authorities.

(19) To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviours are increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.

(20) Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of

market integration. The absence of a mechanism to ensure the best possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is therefore a need to set up an efficient and effective supervisory and investigatory regime for this type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone.

(21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases requires involvement of the Agency, in particular in more integrated energy market. Since the entry into force of Regulation (EU) No 1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011. The Agency should carry out such investigations in cooperation with the national regulatory authorities with the purpose of supporting and complementing their enforcement activities. Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.

(22) The Agency should be empowered to carry out investigations by conducting on-site inspections and by issuing requests for information to the persons under investigations, in particular where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with full assistance, including where a person refuses to be subject to the inspection or to provide the requested information. It is important that the procedural guarantees and fundamental rights of the persons concerned of the persons subject to the Agency's investigations are fully respected. The confidentiality of the information submitted by the persons subject to the investigation should be safeguarded exchanged in accordance with applicable Union data protection rules.

(23) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

HAS ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1227/2011

Regulation (EU) No 1227/2011 is amended as follows:

[1] Article 1 is amended as follows:

[a] Second paragraph is amended as follows:

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

[b] In Article 1(3) the following second subparagraph is added:

"The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall in particular exchange relevant information and data on a regular, at least quarterly, basis regarding potential breaches of Regulation (EU) No 596/2014 of the European Parliament and of the Council involving wholesale energy products covered by this Regulation.

[2] Article 2 is amended as follows:

[a] point (1) is amended as follows:

in the second subparagraph, the following point (e) is added:

"(e) information conveyed by a client or by other persons acting on the client's behalf and relating to the client's pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products";

[b] the third subparagraph is replaced by the following:

"Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the

prices of wholesale energy products. Information may be deemed to be of precise nature if it relates to a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, including future circumstances or future events, and also if it relates to the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event.

An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.

For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s);

[c] paragraph (2), point (a) is replaced by the following:

(2) 'market manipulation' means:

(a) entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products which:

(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(ii) secures, or is likely to secure , by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

[d] in paragraph (2), the following point (c) is added and preceded by the word 'or' at the end of point (b):

"(c) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input

knew or ought to have known that it was false or misleading, or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.";

[e] at the end of paragraph (2) the following subparagraph is added:

"Market manipulation may designate the conduct of a legal person, but also, in accordance with European Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.";

[f] in paragraph (4), point (a) is replaced by the following:

"*(4) 'wholesale energy products' means the following contracts and derivatives, irrespective of where and how they are traded:*

(a) contracts for the supply of electricity or natural gas where delivery is in the Union or contracts for the supply of electricity or natural gas which may result in delivery in the Union;";

[g] paragraph (7) is replaced by the following:

"*(7) 'market participant' means any person, including transmission system operators* and persons professionally arranging or executing transactions when trading on their own account, *who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;***";**

[h] the following new paragraph (8a) is inserted:

"(8a) 'person professionally arranging or executing transactions' means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products;";

[i] the following new paragraph (10a) is added:

"(10a) 'the Agency' or 'ACER' means the European Union Agency for the Cooperation of Energy Regulators;";

[j] the following points are inserted:

"(16) 'registered reporting mechanism' or 'RRM' means a person registered under this Regulation to provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency on behalf of market participants;

(17) ‘inside information platform’ or ‘IIP’ means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants.

(18) ‘algorithmic trading’ means trading in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.

(21) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

(22) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.

(23) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading.

(24) ’LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER.

(25) ‘LNG benchmark’ means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.”;

[3] in Article 3(1) the following second subparagraph is added:

“The use of inside information by cancelling or amending an order concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading.”;

[4] Article 4 is amended as follows:

[a] in paragraph 1 the following 2nd subparagraph is added:

“Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. and complete, correct and timely assessment of the information by the public.”;

[b] paragraph 4 is replaced by the following:

The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes **,** complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article.

[5] The following Article 4a is inserted:

“Article 4a

Authorisation and supervision of IIPs

1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements of this Article and has authorised the operation. The register of IPPs shall be publicly available and shall contain information on the services for which the IIP is registered. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn a registration in accordance with paragraph 5, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.
2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate

such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.

3. The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:

(a) the message ID and event status;

(b) the publication date, the time and the start and stop of the event;

(c) the market participant name and the market participant identification;

(d) the bidding or balancing zone concerned;

(e) and, where applicable:

(a) the type of unavailability and the type of event;

(b) the unit of measurement;

(c) the unavailable, the available and the installed or technical capacity;

(d) the reason for the unavailability;

(e) the fuel type;

(f) the affected asset or unit and its identification code.

4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.

The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request re-transmission of any such erroneous reports.

5. The Agency may withdraw the registration of an IIP where the latter:

(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;

(b) obtained the registration by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was registered;

(d) has seriously and systematically infringed this Regulation.

When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP.

6. The Commission shall, by means of implementing acts, specify:

(a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;

(b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;

(c) the concrete organisational requirements for the implementation of paragraph 4.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).";

[6] The following Article 5a is added:

"Article 5a

Algorithmic trading

1. A market participant that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an organised market place to which it is connected. The market participant shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.

2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of its Member State and to the Agency.

The national regulatory authority of the Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk controls that

it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems.

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly.

The national regulatory authority of the home Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.

The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

4. This article is without prejudice to obligations under Directive (EU) 2014/65.";

[7] in Article 7, paragraph 1 is replaced by the following:

"1. ACER shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation or attempts thereof. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.";

[] New articles from 7a to 7d are added:

"Article 7a

Tasks and powers of ACER to carry out price assessments and benchmarks

1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.

2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price

for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.

3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.

Article 7b

Publication of LNG price assessments and benchmark

1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.

2. For the purposes of this Article, ACER may make use of the services of a third party.

Article 7c

Provision of LNG market data to ACER

1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).

2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29.

3. Where appropriate, ACER shall, after consulting the Commission, issue guidance on:

(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and

(b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.

4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures.

Article 7d

Business continuity

ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of LNG market data contributors.";

[8] Article 8 is amended as follows:

[a] the following paragraph 1a is inserted:

"(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, those market places shall make available to the Agency data relating to the order book or, upon the Agency's request, give the Agency access to the order book so that it is able to monitor trading.";

[b] in paragraph 2, the second subparagraph is replaced by the following:

"Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing transaction reporting systems for monitoring trading activity to detect market abuse."

[c] in paragraph 3, the first subparagraph is replaced by the following:

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Regulation (EU) 600/2014 or Regulation (EU) 648/2012 shall not be subject to double reporting obligations relating to those transactions.

[d] paragraph 4 is amended as follows:

(i) point (d) is replaced by the following:

(d) an organised market place, a trade-matching system or other person professionally arranging or executing transactions;

(ii) the following second subparagraph is added:

"The information shall be provided through registered reporting mechanisms.";

[e] paragraph 5 is replaced by the following:

"5. Market participants shall provide ACER and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, and with inside information publicly disclosed in accordance with Article 4, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.";

[9] in Article 9, paragraph 1 is replaced by the following:

"1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall declare an office , in a Member State in which they are active and register with the national regulatory authority of that Member State.";

[10] the following Article 9a is inserted:

"Article 9a

Authorisation and supervision of the Registered Reporting Mechanisms

1. The operation of an RRM shall be subject to prior authorisation by the Agency in accordance with this Article.

The Agency shall authorise parties as RRM where:

(a) the RRM is a legal person established in the Union; and

(b) the RRM meets the requirements laid down in this Article.

The authorisation to operate as RRM shall be effective and valid for the entire territory of the Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union.

An authorised RRM shall comply at all times with the conditions for authorisation referred to in this Article. An authorised RRM shall, without undue delay, notify ACER of any material changes to the conditions for authorisation.

The Agency shall establish a register of all RRMs in the Union. The register shall be publicly available and shall contain information on the services for which the RRM is authorised and it shall be updated on a regular basis. Where the Agency has withdrawn an authorisation of an RRM in accordance with paragraph 4, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.

2. The Agency shall regularly review the compliance of RRMs with this Regulation. For this purpose, RRMs shall report on an annual basis about their activities to the Agency.

3. RRMs shall have adequate policies and arrangements in place to report the information required under Article 8 as quickly as possible, and no later than within the timing laid down in the implementing acts adopted pursuant to paragraph 5 of this Article.

RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

RRMs shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The RRM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at according to the timing laid down in the implementing acts adopted pursuant to Article 8(2) and (6).

RRMs shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to the market participant and request re-transmission of any such erroneous reports.

RRMs shall have systems in place to enable the RRM to detect errors or omissions caused by the RRM itself and to enable the RRM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the Agency.

4. The Agency may withdraw the authorisation of an RRM where RRM:

(a) does not make use of the authorisation within 18 months, expressly renounces the authorisation or has provided no services for the preceding 18 months;

(b) obtained the authorisation by making false statements or by any other irregular means;

(c) no longer meets the conditions under which it was authorised;

(d) has seriously and systematically infringed this Regulation.

An RRM whose authorisation has been withdrawn shall ensure orderly substitution including the transfer of data to other RRMs and the redirection of reporting flows to other RRMs.

The Agency shall, where relevant, without undue delay, notify the national competent authority in the Member State where the RRM is established of a decision to withdraw the authorisation of an RRM.

5. The Commission shall by means of implementing acts specify :

(a) the means by which an RRM shall comply with the information obligation referred to in paragraph 1; and

(b) the concrete organisational requirements for the implementation of paragraphs 2 and 3.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).";

[11] Article 10 is amended as follows:

[a] paragraph 1 is replaced by the following:

"1. ACER shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with the Commission, *national regulatory authorities, competent financial* market *authorities national competition authorities, ESMA and other relevant authorities* at Union level. *Before establishing such mechanisms, ACER shall consult with those authorities.";*

[b] the following paragraph 1a is inserted:

"(1a) National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the competent financial market

authorities, the national competition authorities, the national tax authorities and EUROFISC and other relevant authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those parties.";

[c] the following paragraph 2a is inserted:

"2a. National regulatory authorities shall give access to the mechanisms referred to in paragraph 1a of this Article only to authorities which have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1).";

[13] Article 12 is amended as follows:

[a] in paragraph 1, the second subparagraph is replaced by the following:

"The Commission, national regulatory authorities, competent financial authorities of the Member States, national tax authorities and EUROFISC, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Article 4(2), Article 7(2) Article 8(5) or Article 10 and shall take steps to prevent any misuse of such information including according to applicable data protection laws.";

[b] paragraph 2 is replaced by the following

"2. Subject to Article 17, ACER may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ACER shall not be prevented from publishing information on organised market places, IIPs, RRMs according to applicable data protection laws.";

[14] Article 13 is amended as follows:

[a] paragraph 1 is replaced by the following:

"1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation**s** set out in Articles 4, 8, 9 and 15 are applied.

National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation thereto, irrespective of where the market participant registered pursuant to Article 9(1) carrying out those acts is resident or established.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function . Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

(a) directly;

(b) in collaboration with other authorities; or

(c) by application to the competent judicial authorities.

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging or executing transactions as referred to in point (d) of Article 8(4).";

[b] the following paragraphs (3) to (9) are added:

"3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.

4. The Agency may exercise its powers to ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied where:

(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or

(b) acts are being or have been carried on wholesale energy products for delivery in at least two Member States and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or

(c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or

(d) the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least three Member States.

5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.

6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same cases by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.";

[15] The following articles 13a to 13d are inserted:

"Article 13a

On-site inspections by the Agency

1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.
2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.
3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.
4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.
5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.
6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.

7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon request.

8. Where the officials of, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires authorisation by a judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure.

10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:

(a) that the decision of the Agency is authentic; and

(b) that any measures to be taken are proportionate and not arbitrary or excessive having regard to the subject matter of the inspection.

For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the investigation. By way of derogation from Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.

Article 13b

Request for information

1. At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:

(a) refer to this Article as the legal basis for the request;

(b) state the purpose of the request;

(c) specify what information is required, and following which data format;

(d) set a time-limit, proportionate to the request, within which the information is to be provided;

(e) inform the person that the reply to the request for information shall not be incorrect or misleading.

2. For the purpose of information requests as referred to in paragraph 1, the Agency shall have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.

3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.

4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition of penalties in accordance with applicable national law.

5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.

6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the concerned Member States.

Article 13c

Procedural guarantees

1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:

(a) the right not to make self-incriminating statements;

(b) the right to be assisted by a person of choice;

(c) the right to use any of the official languages of the Member State where the on-site inspection takes place;

(d) the right to comment on facts concerning them;

(e) the right to receive a copy of the record of interview and either approve it or add observations.

2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.

3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.

Article 13d

Mutual assistance

1. In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.";

[15] Article 15 is amended as follows:

"Article 15

Obligations of persons professionally arranging or executing transactions

Any person professionally arranging or executing transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Persons professionally arranging or executing transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

(a) identify breaches of Article 3, 4 or 5 ;

(b) guarantee that their employees carrying out surveillance activities for the purpose of this Article are preserved from any conflict of interest and act in an independent manner.";

[16] Article 16 is amended as follows:

[a] in paragraph 1, the fourth sub-paragraph is replaced by the following:

"National regulatory authorities, competent financial authorities , the national competition authority and the national tax authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.";

[b] in paragraph 2, the following third subparagraph is added:

"No later than 30 days before adopting a final decision on a breach of this Regulation, national regulatory authorities shall inform the Agency and provide it with a summary of the case and the envisaged decision. The Agency shall maintain a public list of such decisions under this Regulation, including the date of the decision, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. For the purpose of that publication, national regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.";

[c] in paragraph 3, the following point (e) is added:

"(e) the Agency and the national regulatory authorities shall inform the competent national tax authorities and EUROFISC where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a tax fraud.";

[16] the following Articles 16a and 16b are inserted:

"Article 16a

Delegation of tasks and responsibilities

1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to other national regulatory authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their national regulatory authorities enter into such delegation agreements and may limit the scope of delegation to what is necessary for the effective supervision of market participants or groups.

2. The national regulatory authorities shall inform the Agency of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest one month after informing the Agency.

3. The Agency may give an opinion on the intended delegation agreement within one month of being informed.

4. The Agency shall publish, by appropriate means, any delegation agreement as concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.

Article 16b

Guidelines and recommendations

1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles 4a, 8 and 9a.

2. The Agency shall, where appropriate, conduct public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.

3. The national regulatory authorities and market participants shall make every effort to comply with those guidelines and recommendations.

4. Within two months of the issuance of a guideline or recommendation, each national regulatory authority shall confirm whether it complies or intends to comply with that guideline or recommendation. If a national regulatory authority does not comply or does not intend to comply, it shall inform the Agency, stating its reasons.

5. The Agency shall publish the information that a national regulatory authority does not comply or does not intend to comply with that guideline or recommendation. The Agency may also decide to publish the reasons provided by the national regulatory authority for not complying with that guideline or recommendation. The national regulatory authority shall receive advanced notice of such publication.

6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.

7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.";

[18] in Article 17, paragraph 3 is replaced by the following:

"3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.";

[19] Article 18 is replaced by the following:

"1. The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).

The Member States shall notify, in detail, those provisions to the Commission and to the Agency and shall notify it without delay of any subsequent amendment affecting them.

2. Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:

(a) adopt a decision requiring the person to bring the breach to an end;

(b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;

(c) issue public warnings or notices;

(d) adopt a decision imposing periodic penalty payments;

(e) adopt a decision imposing administrative pecuniary sanctions;

in respect of legal persons, maximum administrative pecuniary sanctions of at least:

i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;

ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;

iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.

in respect of natural persons, maximum administrative pecuniary sanctions of at least:

i. for breaches of Articles 3 and 5, EUR 5 000 000;

ii. for breaches of Article 4 and 15, EUR 1 000 000;

iii. for breaches of Article 8 and 9, EUR 500 000.

Notwithstanding paragraphs (e), the amount of the fine shall not exceed 20 % of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed 20 % of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.

3. Member States shall ensure that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.";

Article 2

Amendments to Regulation (EU) 2019/942

Regulation (EU) 2019/942 is amended as follows:

[1] in Article 6, paragraph 8 is deleted.

[2] in Article 12, point (c) is replaced by the following:

(c) Pursue and coordinate investigations pursuant to Articles_13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011.

[3] in Article 32, paragraph 1 is replaced by the following:

"1. Fees shall be due to ACER for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also cover the costs of ACER for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.".

Article 3

Amendments to Commission Implementing Regulation (EU) No 1348/2014

Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:

[1] Article 7a is added:

"Article 7a

LNG market data quality

1. LNG market data shall include:
   (a) the parties to the contract, including buy/sell indicator;
   (b) the reporting party;
   (c) the transaction price;
   (d) the contract quantities;
   (e) the value of the contract;
   (f) the arrival window for the LNG cargo;
   (g) the terms of delivery;
   (h) the delivery points;
   (i) the timestamp information on all of the following:
      (i) the date and time of placing the bid or offer;
      (ii) the transaction date and time;
      (iii) the date and time of reporting of the bid, offer or transaction;
      (iv) the receipt of LNG market data by ACER.
2. LNG market participants shall provide ACER with LNG market data in the following units and currencies:

(a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;

(b) contract quantities shall be reported in the units specified in the contracts and in MWh;

(c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;

(d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format; (to be replaced with cross-references as appropriate)

(e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.

3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.".

Article 4

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament	*For the Council*
The President	*The President*

LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

1.2. Policy area(s) concerned

1.3. The proposal/initiative relates to:

1.4. Objective(s)

1.4.1. General objective(s)

1.4.2. Specific objective(s)

1.4.3. Expected result(s) and impact

1.4.4. Indicators of performance

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention, which is additional to the value that would have been otherwise created by Member States alone.

1.5.3. Lessons learned from similar experiences in the past

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

1.5.5. Assessment of the different available financing options, including scope for redeployment

1.6. Duration and financial impact of the proposal/initiative

1.7. Method(s) of budget implementation planned

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

2.3. Measures to prevent fraud and irregularities

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

3.2. Estimated financial impact of the proposal on appropriations

3.2.1. Summary of estimated impact on operational appropriations

3.2.2. Estimated output funded with operational appropriations

3.2.3. Summary of estimated impact on administrative appropriations

3.2.3.1. Estimated requirements of human resources

3.2.4. Compatibility with the current multiannual financial framework

3.2.5. Third-party contributions

3.3. Estimated impact on revenue

LEGISLATIVE FINANCIAL STATEMENT 'AGENCIES'

1. FRAMEWORK OF THE PROPOSAL/INITIATIVE

1.1. Title of the proposal/initiative

Regulation (EU) of the European Parliament and of the Council amending Regulation (EU) No 1227/2011 and Regulation (EU) 2019/942 to improve the EU's protection against market manipulation.

1.2. Policy area(s) concerned

Policy area: Energy

Activity: European Green Deal

1.3. The proposal relates to

X a new action

☐ a new action following a pilot project/preparatory action[18]

X the extension of an existing action

☐ a merger of one or more actions towards another/a new action

1.4. Objective(s)

1.4.1. General objective(s)

See explanatory memorandum

1.4.2. Specific objective(s)

See section "Grounds for the proposal initiative" below

[18] As referred to in Article 58(2)(a) or (b) of the Financial Regulation.

1.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

The additional resources will allow ACER and DG Energy to carry out the tasks necessary to fulfil their mandate under EU legislation as per the requirements under this proposal.

1.4.4. Indicators of performance

Specify the indicators for monitoring progress and achievements.

See explanatory memorandum as regards monitoring progress and achievements of the initiative.

(a) Effectiveness and timeliness: indicators should allow to monitor performance by providing information on progress on a regular basis and on achievements along the programming period.

(b) Efficiency: processes should be optimised for collection and processing of data, avoiding unnecessary or duplicative requests for information.

(c) Relevance of the indicators and the need to limit the associated administrative burden.

(d) Clarity: indicators should be delivered in a clear and understandable form, with supporting metadata and in a form that facilitates proper interpretation and meaningful communication.

1.5. Grounds for the proposal/initiative

1.5.1. Requirement(s) to be met in the short or long term including a detailed timeline for roll-out of the implementation of the initiative

ACER

Specific objective 1: Authorisation and supervisory powers over registered reporting mechanisms and platforms for the disclosure of inside information

Under this legislative proposal, ACER will be in charge of authorizing and supervising Inside Information Platforms (IIPs) and Registered Reporting Mechanisms (RRMs) which goes beyond the current registration of these entities.

The supervisory duties would consist of authorisation of IIPs and RRMs and day-to-day supervision and would thus be aligned with ESMA's supervisory powers over trade repositories, approved reporting mechanisms and other data reporting services. ACER will also have direct investigative powers vis-a-vis IIPs and RRMs and receives additional powers for issuing guidelines and recommendations to better clarify the perimeter of the data collection.

IIPs and RRMs are relatively new structures, and the number of registrations is expected to be high. Given the large number of RRMs (104 as per 1 January 2023) and IIPs (19 as per 1 January 2023) and following the new legal framework, ACER will need to increase its supervisory efforts for the above-mentioned new supervisory activities. Therefore, the Agency shall hire additional specialised staff for

the supervision of these entities. Those needs in term of human resources can be estimated at 5 FTEs (including 1 IT expert for running the respective business IT systems and their cyber security).

Specific objective 2: Centralisation of collection of STORs at EU level at ACER and monitoring EU wide PPAETs at ACER

The current Article 15 of REMIT led to a decentralisation of knowledge of potential situations of market abuse across the EU as NRAs are not obliged to share suspicious transaction or order reports (STORs) that they receive under Article 15 with other NRAs nor with ACER (although some of them do). At the same time, it has not enabled the surveillance team from ACER to benefit from the knowledge included in these STORs for the benefit of developing an EU wide monitoring strategy.

The proposed REMIT amendments will attribute to ACER the collection of all STORs from all PPAETs across Europe (ACER as a central hub).

In order to calculate the human resources necessary for this activity, ACER estimated the number of STORs to be received from 2024 until 2026, departing from the number of STORs that it is aware for the year of 2022 (mostly STORs that are included in cases notified to the Agency), and correcting it by the additional scope of Article 15 (now also including suspicious breaches of Article 4 and all STORs). ACER estimated that the number of STORs would growth at 2/3 the yearly growth that was observed in the past 6 years. The number of STORs to be received by ACER was then estimated at 236 in 2024, 248 in 2025 and 260 in 2026.

In order to fulfil the subtasks associated with this activity, ACER foresees the need to have 2 additional FTEs.

As regards PPAETs, ACER will have the responsibility to verify whether PPAETs that operate EU wide (i.e., offering products for three or more delivery zones in different member states) maintain effective arrangements and procedures to identify breaches of Articles 3, 4 and 5 of REMIT.

In order to calculate the human resources necessary for this activity, ACER estimated the number of PPAETs that ACER would be monitoring from 2025 until 2027. ACER departed from the list of current PPAETs and identified the ones that fulfil the criteria included in the new Article 15 (i.e., PPAETs arranging or executing transactions in at least three Member States). ACER expects then to be monitoring 34 PPAETs (i.e., less than 30% of the total number of PPAETs).

In order to fulfil the subtasks associated with this activity (PPAET audits and PPAET coordination), it is estimated that 1 additional FTE is needed.

Specific objective 3: ACER complementary powers to investigate and to enforce potential breaches of REMIT

REMIT is amended so that ACER, under specific circumstances (at least three products delivered in different Member States are affected; or two or more products delivered in different Member States are affected and the legal or natural person carrying out the acts is registered or established in a third Member State or outside the EU), can ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied.

These powers will result in a new set of tasks for the Agency, including all the procedural tasks related to the investigation opening, information gathering (processing of requests of information, oral hearings, and organisation of inspections, …), information analysis, and preliminary conclusions on infringements (reports).

At the end of 2022, there were 13 cases in stock that would fulfil this criteria (around 3.7% of the total stock of cases), 9 of which notified in 2022. The annual growth rate of the number of new cases that

would follow under ACER jurisdiction for the period 2024 to 2026 was estimated at 13. 6%/year, which corresponds to two thirds of the annual growth rate observed between 2017 and 2022 for the same type of cases. Based on these assumptions, the stock of cases that would be ACER jurisdictional can then be estimated as 19 in 2024, 21 in 2025, and 24 in 2026. At the same time, ACER will also have the discretion to investigate the most significant cases among those that fulfil the criteria mentioned above.

Using experience with similar tasks performed by DG COMP, in order to fulfil the subtasks associated with this activity it is estimated that ACER needs 11 additional FTE.

Taking into account possible difficulties in recruiting qualified staff, the in total 19 additional FTE will be phased in from 2025 to 2027.

Overhead

Those additional FTE as described above do not include overhead. Applying an overhead ratio of 30%, this means additional 6 FTE, which should take the form of 3 ASTs and 3 AST/SCs preferably to replace interim staff. Those additional FTE are inter alia needed for recruiting the additional staff, hence they are needed from 2025 onwards.

ENER

Currently less than 0.5 FTE work on REMIT in DG Energy. Given the more prominent role of REMIT against the background of the current energy crisis, workload in ENER has increased, hence around 2 FTE are needed.

1.5.2. Added value of Union involvement (it may result from different factors, e.g. coordination gains, legal certainty, greater effectiveness or complementarities). For the purposes of this point 'added value of Union involvement' is the value resulting from Union intervention which is additional to the value that would have been otherwise created by Member States alone.

See explanatory memorandum

1.5.3. Lessons learned from similar experiences in the past

The experience with previous legislative proposals has shown that staffing needs of ACER are easily underestimated. In order to avoid a repeat of the experience with the third internal market package of 2009, where underestimating the staffing needs resulted in structural understaffing (only comprehensively solved starting with the EU budget for 2022), for this proposal staffing needs are estimated for several years into the future.

1.5.4. Compatibility with the Multiannual Financial Framework and possible synergies with other appropriate instruments

This initiative is included in the Commission Work Programme for 2023 as part of the European Green Deal.

1.5.5. Assessment of the different available financing options, including scope for redeployment

The FTE are needed for additional tasks while existing tasks will not decrease in the foreseeable future. The proposal also provides for extending permanently ACER's power related to the implementation of the LNG benchmark (5 FTE under the LFS accompanying Commission proposal COM(2022)549 of 18.10.2022).

As far as legally possible, additional FTE will be financed by the existing fee scheme for ACER's tasks under REMIT. To this end the proposal extends ACER's fee raising powers to the newly introduced inside information platforms and clarifies that also costs for ACER exercising its enhanced investigation and enforcement powers shall be eligible for being funded by fees. The deletion of the current point (a) of Article 32(1) does not reduce ACER's revenues, since so far no use has been made of this clause, since due to the low number of cases the administrative costs of setting up and implementing a fee scheme would be disproportionate.

Subject to the revision of the fees decision[19], it is estimated that around $^{2}/_{3}$ of the additional FTEs would be covered by fees.

[19] Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to the European Union Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) 1227/2011 of the European Parliament and the Council.

1.6. Duration and financial impact of the proposal/initiative

☐ **limited duration**

☐ Proposal/initiative in effect from [DD/MM]YYYY to [DD/MM]YYYY

☐ Financial impact from YYYY to YYYY

X unlimited duration

Implementation with a start-up period from YYYY to YYYY,

followed by full-scale operation.

1.7. Method(s) of budget implementation planned[20]

X Direct management by the Commission through

☐ executive agencies

☐ **Shared management** with the Member States

X Indirect management by entrusting budget implementation tasks to:

☐ international organisations and their agencies (to be specified);

☐the EIB and the European Investment Fund;

X bodies referred to in Articles 70 and 71;

☐ public law bodies;

☐ bodies governed by private law with a public service mission to the extent that they are provided with adequate financial guarantees;

☐ bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that are provided with adequate financial guarantees;

☐ bodies or persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.

Comments

[20] Details of budget implementation methods and references to the Financial Regulation may be found on the BUDGpedia site: https://myintracomm.ec.europa.eu/corp/budget/financial-rules/budget-implementation/Pages/implementation-methods.aspx

2. MANAGEMENT MEASURES

2.1. Monitoring and reporting rules

Specify frequency and conditions.

According to its financial regulation, ACER has to provide, in the context of its Programming Document, an annual Work Programme including details on resources, both financial and human, per each of the activities carried out.

ACER reports monthly to DG ENER on budget execution, including commitments, and payments by budget title, and vacancy rates by type of staff.

In addition, DG ENER is directly represented in the governance bodies of ACER. Through its representatives in the Administrative Board, DG ENER will be informed of the use of the budget and the establishment plan at each of its meetings during the year.

Finally, also in line with financial rules, ACER is subject to annual requirements for reporting on activities and the use of resources through the Administrative Board and its Annual Activity Report.

The tasks directly implemented by DG ENER will follow the annual cycle of planning and monitoring, as implemented in the Commission and the executive agencies, including reporting the results through the Annual Activity Report of DG ENER.

2.2. Management and control system(s)

2.2.1. Justification of the management mode(s), the funding implementation mechanism(s), the payment modalities and the control strategy proposed

While ACER will have to develop new expertise, it is nevertheless most cost-effective to allocate the new tasks under this proposal to an existing agency which already works on similar tasks.

DG ENER established a control strategy for managing its relations with ACER, part of the 2017 Internal Control Framework of the Commission. ACER revised and adopted its own Internal Control Framework in December 2018.

2.2.2. Information concerning the risks identified and the internal control system(s) set up to mitigate them

Main risk are wrong estimates as regards the workload created by this proposal, given that it introduces new tasks. This risk needs to be accepted, since, as experience has shown, if additional resources needs are not included in the initial proposal, it is very difficult to remedy this situation later on.

That the proposal includes several new tasks mitigates this risk, since while the workload of some future tasks may be underestimated, others may be overestimated, providing scope for possible future redeployment.

2.2.3. Estimation and justification of the cost-effectiveness of the controls (ratio of "control costs ÷ value of the related funds managed"), and assessment of the expected levels of risk of error (at payment & at closure)

The allocation of additional tasks to the existing mandate of ACER is not expected to generate specific additional controls at ACER, therefore, the ratio of control costs over value of funds managed will remain unaltered.

Similarly, the tasks assigned for DG ENER will not result in additional controls or change in the ratio of control costs.

2.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures, e.g. from the Anti-Fraud Strategy.

ACER applies the anti-fraud principles of decentralised EU Agencies, in line with the Commission approach.

In March 2019 ACER adopted a new Anti-Fraud Strategy, repealing Decision 13/2014 of the Administrative Board of ACER. The new strategy, spanning over a three-year period, is based on the following elements: an annual risks assessment, the prevention and management of conflicts of interest, internal rules on whistleblowing, the policy and procedure for the management of sensitive functions, as well as measures related to ethics and integrity.

DG ENER also adopted a revised Anti-fraud Strategy (AFS) in 2020. The ENER AFS is based on the Comission Anti-fraud Strategy and a specific risk assessment carried out internally to identify the areas most vulnerable to fraud, the controls already in place and the actions necessary to improve DG ENER's capacity to prevent, detect and correct fraud.

Both the ACER Regulation and the contractual provisions applicable to public procurement ensure that audits and on-the-spot checks can be carried out by the Commission services, including OLAF, using the standard provisions recommended by OLAF.

3. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

3.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

Existing budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./Non-diff.[21]	from EFTA countries [22]	from candidate countries and potential candidates [23]	From other third countries	other assigned revenue
02	02 10 06 and ITER Budget line	Diff./~~Non-diff.~~	YES/~~NO~~	~~YES~~/NO	~~YES~~/NO	~~YES~~/NO

New budget lines requested

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number	Diff./non-diff.	from EFTA countries	from candidate countries and potential candidates	from other third countries	other assigned revenue
	[XX.YY.YY.YY]		YES/NO	YES/NO	YES/NO	YES/NO

[21] Diff. = Differentiated appropriations / Non-diff. = Non-differentiated appropriations.

[22] EFTA: European Free Trade Association.

[23] Candidate countries and, where applicable, potential candidates from the Western Balkans.

3.2. Estimated impact on expenditure

3.2.1. Summary of estimated impact on expenditure

EUR million (to three decimal places)

Heading of multiannual financial framework	01	[Single Market, Innovation and Digital

ACER			Year **2024**	Year **2025**	Year **2026**	Year **2027**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
Title 1[24]:	Commitments	(1)		0,684	0,946	1,288				**2,918**
	Payments	(2)		0,684	0,946	1,288				**2,918**
Title 2:	Commitments	(1a)								
	Payments	(2a)								
Title 3[25]:	Commitments	(3a)								
	Payments	(3b)								
TOTAL appropriations for ACER	Commitments	=1+1a +3a		**0,684**	**0,946**	**1,288**				**2,918**
	Payments	=2+2a +3b		**0,684**	**0,946**	**1,288**				**2,918**

[24] Expenditure under Title 1 corresponds to staff to be funded under EU Contribution. The remaining two thirds of the staff required should be funded via Fees and Charges.

[25] Expenditure foreseen under Title 3 of EUR 4,2 million over 2025-2027 should be funded via Fees and Charges.

Heading of multiannual financial framework	7	'Administrative expenditure'

EUR million (to three decimal places)

		Year 2024	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
DG: ENER									
O Human Resources			0,342	0,342	0,342				**1,026**
O Other administrative expenditure									
TOTAL DG ENER	Appropriations		**0,342**	**0,342**	**0,342**				**1,026**

TOTAL appropriations under HEADING 7[26] of the multiannual financial framework	(Total commitments = Total payments)		**0,342**	**0,342**	**0,342**				**1,026**

EUR million (to three decimal places)

		Year 2024[27]	Year 2025	Year 2026	Year 2027	Enter as many years as necessary to show the duration of the impact (see point 1.6)			TOTAL
TOTAL appropriations under HEADINGS 1 to 7 of the multiannual financial framework	Commitments		1,026	1,288	1,630				**3,944**
	Payments		1,026	1,288	1,630				**3,944**

[26] *The appropriations required for human resources and other expenditure of an administrative nature will be met by appropriations from the DG that are already assigned to management of the action and/or have been redeployed within the DG, together if necessary with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.*

[27] Year N is the year in which implementation of the proposal/initiative starts. Please replace "N" by the expected first year of implementation (for instance: 2021). The same for the following years.

3.2.2. Estimated impact on ACER's appropriations

☐ The proposal/initiative does not require the use of operational appropriations

☐ The proposal/initiative requires the use of operational appropriations, as explained below:

Amounts in EUR million (to three decimal places)

Indicate objectives and outputs ⇩			Year **N**		Year **N+1**		Year **N+2**		Year **N+3**		Enter as many years as necessary to show the duration of the impact (see point 1.6)						**TOTAL**	
	OUTPUTS																	
	Type [28]	Average cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	No	Cost	Total No	Total cost
SPECIFIC OBJECTIVE No 1[29]…																		
- Output																		
- Output																		
- Output																		
Subtotal for specific objective No 1																		
SPECIFIC OBJECTIVE No 2 ...																		
- Output																		
Subtotal for specific objective No 2																		
TOTAL COST																		

Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

[28] Outputs are products and services to be supplied (e.g.: number of student exchanges financed, number of km of roads built, etc.).

[29] As described in point 1.4.2. 'Specific objective(s)…'

3.2.3. Estimated impact on ACER's human resources

3.2.3.1. Summary

☐ The proposal/initiative does not require the use of appropriations of an administrative nature

X The proposal/initiative requires the use of appropriations of an administrative nature, as explained below:

EUR million (to three decimal places) Where applicable, amounts reflect the sum of the Union contribution to the agency and other revenue of the agency (fees and charges).

	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)		0,855	1,710	2,565	**5,130**
Temporary agents (AST grades)		0,513	0,513	0,513	**1,539**
Temporary agents (AST/SC grades)		0,513	0,513	0,513	**1,539**
Contract staff		0,091	0,273	0,364	**0,728**
Seconded National Experts					
TOTAL		**1,972**	**3,009**	**3,955**	**8,936**

Staff requirements (FTE):

	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)	0	5	10	15	**15**
Temporary agents (AST grades)	0	3	3	3	**3**
Temporary agents (AST/SC grades)		3	3	3	**3**
Contract staff	0	1	3	4	**4**
Seconded National Experts					
TOTAL		**12**	**19**	**25**	**25**

Planned recruitment date for the FTEs is the 1 January of the respective year.

Of which are funded by the EU contribution (FTE)[30]:

	Year **2024**	Year **2025**	Year **2026**	Year **2027**	**TOTAL**
Temporary agents (AD Grades)	0	2	3	5	**5**
Temporary agents (AST grades)		1	1	1	**1**
Temporary agents (AST/SC grades)		1	1	1	**1**
Contract staff			1	1	**1**
Seconded National Experts					
TOTAL	**0**	**4**	**6**	**8**	**8**

[30] Each year, in accordance with Article 3(1) of Commission Decision (EU) 2020/2152, ACER will identify those costs, including staff costs, which are eligible for funding by fees and present the result in its draft programming document. In accordance with Article 20 of Regulation (EU) 2019/942, the Commission provides an opinion on ACER's draft programming document, including the Agency's proposals as regards which costs are considered as eligible for funding by fees and the scope for thereby reducing the burden on the EU budget.

3.2.3.2. Estimated requirements of human resources for the parent DG

☐ The proposal/initiative does not require the use of human resources.

☐ The proposal/initiative requires the use of human resources, as explained below:

Estimate to be expressed in full amounts (or at most to one decimal place)

		Year **2024**	Year **2025**	Year **2026**	Year **2027**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
• **Establishment plan posts (officials and temporary staff)**								
20 01 02 01 and 20 01 02 02 (Headquarters and Commission's Representation Offices)			2	2	2			
20 01 02 03 (Delegations)								
01 01 01 01 (Indirect research)								
10 01 05 01 (Direct research)								
○ **External staff (in Full Time Equivalent unit: FTE)**[31]								
20 02 01 (AC, END, INT from the 'global envelope')								
20 02 03 (AC, AL, END, INT and JPD in the Delegations)								
Budget line(s) (specify)[32]	- at Headquarters[33]							
	- in Delegations							
01 01 01 02 (AC, END, INT – Indirect research)								
10 01 05 02 (AC, END, INT – Direct research)								
Other budget lines (specify)								
TOTAL			**2**	**2**	**2**			

The human resources required will be met by staff from the DG who are already assigned to management of the action and/or have been redeployed within the DG, together, if necessary,

[31] AC = Contract Staff; AL = Local Staff; END = Seconded National Expert; INT = agency staff; JPD = Junior Professionals in Delegations.

[32] Sub-ceiling for external staff covered by operational appropriations (former 'BA' lines).

[33] Mainly for the EU Cohesion Policy Funds, the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime Fisheries and Aquaculture Fund (EMFAF).

with any additional allocation which may be granted to the managing DG under the annual allocation procedure and in the light of budgetary constraints.

3.2.4. Compatibility with the current multiannual financial framework

☐ The proposal/initiative is compatible the current multiannual financial framework.

X The proposal/initiative will entail reprogramming of the relevant heading in the multiannual financial framework.

The initiative has been triggered by the current energy crisis and hence was not factored in when the MFF headings were calculated. This specific initiative being new, it will require reprogramming both for the line of the contribution to ACER and the line that will support additional work within DG ENER. To the extent that they cannot be covered by fees, the budgetary impacts on ACER as decribed in this legislative financial statement will be offset by a compensatory reduction on programmed spending in ITER budget line.

☐ The proposal/initiative requires application of the flexibility instrument or revision of the multiannual financial framework[34].

Explain what is required, specifying the headings and budget lines concerned and the corresponding amounts.

3.2.5. Third-party contributions

The proposal/initiative does not provide for co-financing by third parties.

The proposal/initiative provides for the co-financing estimated below:

EUR million (to three decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations co-financed								

[34] See Articles 12 and 13 of Council Regulation (EU, Euratom) No 2093/2020 of 17 December 2020 laying down the multiannual financial framework for the years 2021 to 2027.

3.3. Estimated impact on revenue

X The proposal/initiative has no financial impact on revenue.

☐ The proposal/initiative has the following financial impact:

☐ on own resources

☐ on other revenue

please indicate, if the revenue is assigned to expenditure lines ☐

EUR million (to three decimal places)

Budget revenue line:	Appropriations available for the current financial year	Impact of the proposal/initiative[35]						
		Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	Enter as many years as necessary to show the duration of the impact (see point 1.6)		
Article …….								

For miscellaneous 'assigned' revenue, specify the budget expenditure line(s) affected.

Specify the method for calculating the impact on revenue.

[35] As regards traditional own resources (customs duties, sugar levies), the amounts indicated must be net amounts, i.e. gross amounts after deduction of 20 % for collection costs.