



Council of the  
European Union

Brussels, 12 May 2023  
(OR. en)

9202/23

LIMITE

ENER 230  
ENV 481  
CLIMA 236  
COMPET 425  
CONSOM 168  
FISC 82  
CODEC 824

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Interinstitutional File:  
2023/0076(COD)

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**NOTE**

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From: General Secretariat of the Council  
To: Delegations

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No. prev. doc.: 8932/23  
No. Cion doc.: 7435/23 + ADD 1

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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

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Delegations will find in the annex the third revision of the above-mentioned proposal (REV 3).

New text is **bold underline**, and deletions are ~~strikethrough~~, both without grey shading.

Deletions that appeared in doc. 8105/23 ("REV 1") and in doc. 8932/23 ("REV 2") are marked in ~~strikethrough~~.

New text that appeared in doc. 8105/23 ("REV 1") and in doc. 8932/23 ("REV 2") is marked with **bold**.

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 **address**~~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<sup>1</sup>, including with respect to 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. **While the definition of market manipulation does not entail a general obligation for market participants to offer capacity or production, the withholding of capacity of production, carried out by any market participant with the relative ability to influence the price or the interplay of supply and demand of a wholesale energy product, could amount to**

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<sup>1</sup> 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).

**market manipulation, for instance when it artificially causes prices to be at a level not justified by market forces of supply and demand.**

- (3) The definition of inside information should also be adjusted to ~~mirror~~ **align with** 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 **wholesale energy products**~~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 EU~~uropean~~ 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 **the Agency**~~ACER~~ to publish information on organised market places, IIPs, RRM in **compliance with**~~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.

- (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 ~~should~~ 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.

- (10a) **Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data between relevant national authorities and the reporting by national regulatory authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council, and any exchange or transmission of information by the Agency should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.**
- (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. **The Agency should have the power to withdraw such authorisation in certain cases, while respecting the procedural safeguards pursuant to Articles 14(6) to (8) of Regulation (EU) 2019/942. The withdrawal of an authorisation should not prevent an entity from applying for a new authorisation as IIP with the Agency.**
- (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 RRM should be authorised by the Agency, **as is already the case pursuant to Article 11 of Commission Implementing Regulation (EU) No 1348/2014. ~~The~~ RRM, including those authorised by the Agency under that Implementing Regulation,** should at all times comply with the conditions for authorisation and **with** data protection law. The Agency should **maintain** ~~also establish~~ a register of all RRM **it has authorised** ~~in the Union~~. **The Agency should have the power to withdraw such authorisation in certain cases, while respecting the procedural safeguards pursuant to Articles 14(6) to (8) of Regulation (EU) 2019/942. The withdrawal of an authorisation should not prevent an entity from applying for a new authorisation as RRM with the Agency.**

- (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. **The Agency**~~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 **the Agency**~~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. **The national regulatory authorities should be able to** ~~introduce~~<sup>ing</sup> specific conditions and ~~limiting~~<sup>ing</sup> the scope ~~of~~<sup>for</sup> 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. **In order to ensure the consistent application of administrative fines across Member States for breaches of that Regulation, it should provide for a list of administrative fines and administrative measures which should be available to the national regulatory authorities as well as for a list of criteria for determining the level of those administrative fines and for levels of administrative fines. Fines***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. **The adoption and publication of administrative fines should respect fundamental rights as laid down in the Charter.** Administrative ~~measures~~*sanctions*, **administrative fines**~~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 **any necessary** investigations by conducting on-site inspections, **as well as** ~~and~~ by issuing requests for information **by simple request or by decision**, to the persons under investigations, ~~in particular~~ where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. **In order to safeguard the effectiveness of on-site inspections, the officials of and other persons authorised by the Agency to conduct the inspection should be empowered to enter any premises where business records may be kept, including private premises of directors, managers and other members of staff of businesses concerned by an investigation. However, the exercise of this latter power should be subject to a reasoned decision by the Agency and the prior authorisation by a judicial authority.** 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. **The Agency should not be empowered to issue fines for the submission of inaccurate, incorrect or misleading information or for failure to respond to a request for information, irrespective of whether the latter has been issued in a form of a simple request or a decision. Such powers should remain with the Member State(s) concerned and their respective applicable legislative framework(s). Moreover, in the course of an inspection, the officials of and other persons authorised by the Agency to conduct the**

**inspection should be empowered to affix seals for the period of time necessary for the inspection. Seals should normally not be affixed for more than 72 hours. In addition, the officials conducting the inspections should be empowered to ask for any information relevant to the subject matter and purpose of the inspection.** It is important that the procedural guarantees and fundamental rights of ~~the persons concerned of the persons subject to the Agency's investigations~~ **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. **-At the end of each investigation the Agency should issue an investigation report including its preliminary findings and all evidence on which such findings have been based. The investigation report should be sent to the national regulatory authorities of the Member State(s) concerned, which should, in turn, take all necessary enforcement measures, including the imposition of fines, according to national law and the provisions of this Regulation.**

- (22a) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, in particular the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and the right not to be tried or punished twice for the same offence, and has to be interpreted and applied in accordance with those rights and principles.**
- (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] ~~The *see* paragraph 2 is amended as follows~~ **replaced by the following:**

“2. ~~“F~~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 **Union**~~European~~ competition law to the practices covered by this Regulation”.

[b] In **paragraph 3** ~~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 **point 1**~~this Article~~.

For the purposes of **point (1)**~~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~~ **market participant** would be likely to use as part of the basis of his or her ~~investment~~ **decision(s) concerning trading with wholesale energy products** ~~decision(s)~~”;

[c] ~~point 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 ~~such~~*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 ~~point 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 ~~point~~*aragraph* (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 ~~point~~*aragraph* (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 **as a result of single day-ahead and intraday coupling**”;

[g] ~~point~~*aragraph* (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 ~~point~~*aragraph* (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 ~~point~~*aragraph* (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~~ **authorised** 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~~ **authorised** 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 **IT** 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 **\_system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a way that may result in a transaction**~~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.~~

**(20a) ‘order book’ means all details of wholesale energy products executed at organised market places including matched and unmatched orders as well as system-generated orders and life cycle events.**

(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 **this Regulation**~~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 **the Agency**~~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 2<sup>nd</sup> 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 **prompt**~~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:

“4. 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~~ **necessarily timely, public disclosure in a timely manner in** ~~within~~ 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 **in paragraphs 2 to 4** of ~~this Article~~ and has authorised ~~its~~*the* operation. The register of IIPs shall be publicly available and shall contain information on the services for which the IIP is ~~registered~~**authorised**. The Agency shall regularly review the compliance of IIPs with **paragraphs 2 to 4** ~~this Regulation~~. Where the Agency has withdrawn an **authorisation** ~~registration~~ in accordance with paragraph 5, **it shall remove the IIP** ~~that withdrawal shall be published in~~ **from** 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 **and accessible** for all purposes free of charge, **including through an application programming interface**. The IIP shall efficiently and consistently disseminate such information in a way that ensures **prompt**~~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 date and time of** the publication~~date~~, **and of** ~~the time and~~ **the beginning**~~start~~ and **the end**~~stop~~ of the event;
  - (c) the market participant name and the market participant identification;
  - (d) **the type of information (e.g., unavailability, forecast, actual use)**

(~~e~~) the bidding or balancing zone concerned; **and**

(~~e~~f) ~~and~~, where applicable:

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

(~~b~~)(ii) the unit of measurement;

(~~e~~)(iii) the unavailable, the available and the installed or technical capacity;

(~~a~~)(iv) the reason for the unavailability;

(~~e~~)(v) the fuel type;

(~~f~~)(iv) 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 an **OMP** ~~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, **to** 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 **to receive a corrected version of such** ~~re-transmission of any such erroneous~~ reports.

5. The Agency may withdraw the **authorisation**~~registration~~ of an IIP by means of a **decision and remove it from the register** where the IIP~~letter~~:
- (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 **requirements for authorisation set out in paragraphs 2 to 4** ~~conditions under which it was registered~~; or
  - (d) has seriously and systematically infringed this Regulation.

**The Agency shall withdraw the authorisation of an IIP by means of a decision and remove it from the register where the IIP expressly renounces the authorisation by informing the Agency.**

6. **The Agency shall afford an IIP subject to a possible withdrawal of its authorisation the appropriate procedural guarantees, including those referred to in Article 14(6) to (8) of Regulation (EU) 2019/942.**
7. When the **Agency**~~registration~~ has ~~been~~ withdrawn **an authorisation**, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs. **-To ensure continuity, the Agency shall give the IIP a reasonable time period of at least six months to ensure such orderly substitution. The Agency may however provide a shorter time period, if the continued operation of the IIP may jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of an authorisation.**

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established, **and inform market participants of the**~~a~~ decision to withdraw the **authorisation**~~registration~~ of an IIP.

86. By [two years after entry into force of the amending regulation], the Commission shall adopt implementing acts specifying: *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;-
- (d) the details concerning the process of withdrawing an authorisation of an IIP, including the procedural safeguards referred to in paragraph 6;**
- (e) the details concerning the process of orderly substitution referred to in paragraph 7;**
- (f) the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an IIP.**

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 **OMP** ~~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 ~~the~~ **the** Member State **where it is registered pursuant to Article 9(1)** and to the Agency.

The national regulatory authority of the Member State ~~whereof~~ **whereof** the market participant **is registered pursuant to Article 9(1)** 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 requirements 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 **for 5 years** 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~~ **national regulatory** authorities of ~~the~~~~its~~ ~~home~~ Member State **where it is registered pursuant to Article 9(1)** and the Agency accordingly.

The national regulatory authority of the ~~home~~ Member State ~~of the~~~~where~~ a market participant **is registered pursuant to Article 9(1)** 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 **for 5 years** 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 ~~A~~article is without prejudice to obligations under Directive (EU) 2014/65.”;

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

“1. **The Agency**~~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 **the Agency**~~ACER~~ to carry out price assessments and benchmarks

1. ~~As a matter of urgency,~~ **The Agency**~~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, **the Agency**~~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,~~ **The Agency**~~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, **the Agency**~~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, i~~In addition to the publication of the LNG price assessment, **the Agency**~~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, **the Agency**~~ACER~~ may make use of the services of a third party.

#### Article 7c

##### Provision of LNG market data to **the Agency**~~ACER~~

1. LNG market participants shall submit daily to **the Agency**~~ACER~~ the LNG market data in accordance with the specifications set out in **this Regulation**~~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 21(2)~~9~~.

3. Where appropriate, **the Agency**~~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 **the Agency**~~ACER~~ free of charge and through the reporting channels established by **the Agency**~~ACER~~, where possible using already existing and available procedures.

## **Article 7d**

### **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 the Agency.**

**2. LNG market participants shall provide the Agency 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 the Agency 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. The Agency 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 7~~e~~

### Business continuity

**The Agency**~~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~~ **OMPs, or third parties on their behalf**, 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 **the Agency**~~#~~ is able to monitor trading **on the wholesale energy market**.

**The Commission shall adopt implementing acts specifying the further details regarding the operation of this paragraph, including the specific arrangements for ensuring effective data reporting.**

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

[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 **the Agency**~~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 (1), **the first sub-paragraph in ~~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 **paragraph 3** ~~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 **paragraphs 1 and 3** ~~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 **which it has authorised in accordance with this paragraph** ~~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, **it shall remove the RRM from the register** ~~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 RRM with **paragraphs 1 and 3**~~this Regulation~~. For this purpose, RRM shall report on an annual basis about their activities to the Agency.
3. RRM shall have adequate policies and arrangements in place to **ensure the prompt reporting of** ~~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~~.

RRM 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.

RRM 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)~~.

RRM 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 **to receive a corrected version of such** ~~re-transmission of any such erroneous~~ reports.

RRM 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 **by means of a decision and remove it from the register** where **the 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 **requirements for authorisation set out in paragraphs 1 and 3**~~conditions under which it was authorised~~; or
  - (d) has seriously and systematically infringed this Regulation.

**The Agency shall withdraw the authorisation of an RRM by means of a decision and remove it from the register where the RRM expressly renounces the authorisation by informing the Agency.**

5. **The Agency shall afford an RRM subject to a possible withdrawal of its authorisation the appropriate procedural guarantees, including those referred to in Article 14(6) to (8) of Regulation (EU) 2019/942.**

**Where the Agency has withdrawn an ~~An RRM whose~~ authorisation, the RRM ~~has been withdrawn~~ shall ensure orderly substitution including the transfer of data to other RRMs and the redirection of reporting flows to other RRMs. To ensure continuity, the Agency shall give the RRM a reasonable time period of at least six months, to ensure such orderly substitution. The Agency may however provide a shorter time period, if the continued operation of the RRM may jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of an authorisation.**

The Agency shall, ~~where relevant,~~ without undue delay, notify the national competent authority in the Member State where the RRM is established, **and inform market participants** of ~~the~~ decision to withdraw the authorisation of an RRM.

65. By [two years after entry into force of the amending regulation], the Commission shall adopt implementing acts specifying: ~~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;
- (c) **the details concerning the process of withdrawing an authorisation of an RRM, including the procedural safeguards referred to in paragraph 5;**
- (cc) **the details concerning the process of orderly substitution referred to in paragraph 5;**
- (d) **the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an RRM.**

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. **The Agency**~~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, **EUROFISC** and other relevant authorities at Union level. Before establishing such mechanisms, **the Agency**~~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. **The Agency shall, where appropriate, issue non-binding guidelines to facilitate the establishment of such mechanisms by national regulatory authorities**”;

[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 ~~that~~<sup>which</sup> 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, **and shall ensure compliance with** ~~including according to~~ applicable data protection laws.”;

[b] **the first subparagraph in** paragraph 2 is replaced by the following

“2. Subject to Article 17, ~~the Agency~~<sup>ACER</sup> 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. **The Agency**~~ACER~~ ~~may~~ ~~shall not be prevented from~~ publishing **aggregated** information on organised market places, IIPs ~~and~~<sup>RRMs</sup> **in compliance with**~~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 obligations 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 (97) 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 on 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 out 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 out these acts is resident or established in a third country **and under an obligation to register** ~~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) **in cases having a cross-border impact.** ~~;~~ ~~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.~~

**4a. The Agency may exercise its powers to ensure that the obligations set out in Article 4 are met where 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 ~~facts~~ ~~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, **4a and 5** the Agency shall draw up an investigation report **setting out the Agency’s preliminary findings. The investigation report shall also include all evidence on which the preliminary findings have been based. The Agency shall make public a** ~~The report shall be made public~~ **summary of the preliminary findings** taking into account confidentiality requirements, **unless such disclosure would undermine the protection of the investigation or cause disproportionate damage to the parties involved. The Agency shall ensure that such publication clearly indicates that any findings are only preliminary and that no final decision has been taken. Where personal data are concerned, the Agency shall, in accordance with Regulation (EU) 2018/1725, inform the person or entity concerned of their rights under the applicable data protection rules and of the procedures available for exercising those rights.** If the Agency ~~considers~~ **concludes** **in the investigation report** 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 they **take necessary measures including** ~~breach be dealt with~~ in accordance with Articles 18. **In the investigation report** ~~t~~ 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 **and in coordination** with the relevant authorities of the Member State concerned.
2. In order to fulfil its obligations under **Article 13(4), (4a) and (5)** this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation **where business records may be kept**. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement **to the persons subject to the investigation. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall be empowered to affix seals for the period of time necessary for the inspection.**
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.~~ **To the extent necessary for the inspection, the officials of and other persons authorised by the Agency to conduct an on-site inspection are empowered:**

**(a) to enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6;**

**(b) to examine the books and other records related to the business, irrespective of the medium on which they are stored;**

**(c) to take or obtain in any form copies of or extracts from such books or records;**

**(d) to seal any business premises and books or records for the period and to the extent necessary for the inspection. Except in duly justified cases, seals shall not be affixed for more than 72 hours;**

**(e) to ask any representative or member of staff of the persons subject to an investigation for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.**

**3a. If a reasonable suspicion exists that business records related to the subject-matter of an inspection which may be relevant to prove a breach of this Regulation, are being kept in private premises of directors, managers and other members of staff of businesses concerned by an investigation, the Agency may by decision carry out an inspection in such private premises. In such cases, the decision referred to in paragraph 6 shall also state the reasons that have led the Agency to conclude that a suspicion as referred to in the first sentence of this paragraph exists.**

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 **does not object on the grounds that investigations related to the same facts are already in progress or have been carried out it is about to or in the process of carrying out an inspection at any premises of the person subject to the investigation** 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, ~~indicate~~<sup>appoint</sup> 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 ~~have~~<sup>enjoy</sup> 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. **In the cases referred to in paragraph 3a, an on-site inspection may not be carried out without a a prior authorisation by a judicial authority.**

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 **natural or legal** person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations **in Article 13(4), (4a) and (5) 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 **provide**afford the **Agency**m, 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 **Articles 13 and 13a to 13c**~~this Regulation~~, national regulatory authorities and the Agency shall assist each other **in the course of an investigation**.”;

[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 **potential** 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~~**may** inform the Agency and provide it with a summary of the case and the envisaged decision. **After adopting a decision on a breach of this Regulation, the national regulatory authority shall provide this decision to the Agency, including information on its date, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. At the same time, the national regulatory authority shall indicate to the Agency what information it has disclosed to the public as referred to in Article 18(3) and shall promptly inform the Agency of any subsequent changes to such information. The Agency shall maintain a public list of such information that the national regulatory authorities have disclosed to the public as referred to in Article 18(3).**~~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 **between national regulatory authorities**

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 **non-binding** 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 **take due account of** ~~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.~~

47. 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 **without prejudice to** 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.**

**Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fining procedure is initiated by the competent authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have equivalent effect to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify to the Commission the provisions of their laws which they adopt pursuant to this paragraph by [date] and, without delay, any subsequent amendment law or amendment affecting them.**

*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 **fines** ~~pecuniary sanctions~~;

in respect of legal persons, maximum administrative ~~fin~~*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 ~~fin~~*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.”;

**3a. Member States shall ensure that when determining the type and level of administrative fines, national regulatory authorities take into account all relevant circumstances, including, where appropriate:**

- (a), the gravity and duration of the infringement;**
- (b), the degree of responsibility of the person responsible for the infringement;**
- (c), the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;**
- (d), the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;**
- (e), the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;**
- (f), previous infringements by the person responsible for the infringement; and**
- (g), measures taken by the person responsible for the infringement to prevent its repetition.**

**3b. In the exercise of their powers to impose administrative fines and other administrative measures under the second subparagraph of paragraph (1), national regulatory authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative fines that they impose, and the other administrative measures that they take, are effective and appropriate under this Regulation. They shall coordinate their actions in accordance with Article 16(2) in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative fines in respect of cross-border cases.**

## 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”.

**[2a] in Article 12 the following point (d) is inserted:**

**“(d) authorise and supervise IIPs and RRM s pursuant to Articles 4a and 9a of Regulation (EU) No 1227/2011.”**

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

“1. Fees shall be due to **the Agency**~~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 **the Agency**~~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 34*  
*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.

**Articles 4a, 9a and 8(1a) shall apply with effect from six months after the date on which the Commission adopts the relevant implementing acts referred to in those Articles.**

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

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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