



Council of the European Union
General Secretariat

Brussels, 29 March 2023

WK 4300/2023 INIT

LIMITE

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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	DK comments on REMIT Regulation (ST 7435/23)

Delegations will find in the annex the DK comments on REMIT Regulation (ST 7435/23).

REMIT Regulation

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Commission proposal	Drafting Suggestions	Comments
2023/0076 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market		
(Text with EEA relevance)		
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,		
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,		
Having regard to the proposal from the European Commission,		

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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		

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framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against attempts of market manipulation, Regulation (EU) No 1227/2011 should be amended to further increase insufficient transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.		
(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament		

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and of the Council¹, 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		

¹ 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).

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products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.		
(3) The definition of inside information should also be adjusted to mirror Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of		

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the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.		
(4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.		
(5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU)		

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596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.		
(6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the ‘Agency’ or ‘ACER’) should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. This should include the possibility for ACER to publish information on organised market places, IIPs, RRMIs according to applicable data protection laws in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.		

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(7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 shall be duly authorized pursuant to the requirements of that Directive.		
(8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale energy markets. Many market participants use algorithmic trading and high frequency algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.		
(9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of utmost importance to		

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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		

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data set to the Agency. Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.		
(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.		
(12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRMs should be authorised by the Agency. The RRMs should at all times		

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comply with the conditions for authorisation and data protection law. The Agency should also establish a register of all RRM in the Union.		
(13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting.		
(14) Persons professionally arranging and executing transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic		

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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		

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the definition of wholesale energy product pursuant to this Regulation.		
(16) In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the Agency should collect all the LNG market data that are necessary to establish a daily LNG price assessment. The price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023,		

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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		

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tasks and responsibilities to another national regulatory authority. Introducing specific conditions and limiting the scope for the delegation to what is necessary for the effective supervision of cross-border market participants or groups should be possible. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.		
(18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect the type of the breaches, taking into account the <i>ne bis in idem</i> principle. Administrative sanctions, penalty payments and supervisory measures are complementary parts of an effective enforcement regime. A		

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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		

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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		

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market. Since the entry into force of Regulation (EU) No 1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011. The Agency should carry out such investigations in cooperation with the national regulatory authorities with the purpose of supporting and complementing their enforcement activities. Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.		
(22) The Agency should be empowered to carry out investigations by conducting on-site		

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

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(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:		

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[1] Article 1 is amended as follows:		
[a] Second paragraph is amended as follows:		
2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.		
[b] In Article 1(3) the following second subparagraph is added:		
“The Agency, national regulatory authorities, ESMA and competent financial authorities of		

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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”;		

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[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		

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about or resulting in those future circumstances or that future event.		
An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article.		
For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s);		
[c] paragraph (2), point (a) is replaced by the following:		
(2) 'market manipulation' means:		

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(a) entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products which:		
(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;		
(ii) secures, or is likely to secure , by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or		

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(iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;		
or		
[d] in paragraph (2), the following point (c) is added and preceded by the word ‘or’ at the end of point (b):		
“(c) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.”;		

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[e] at the end of paragraph (2) the following subparagraph is added:		
“Market manipulation may designate the conduct of a legal person, but also, in accordance with European Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.”;		
[f] in paragraph (4), point (a) is replaced by the following:		
<i>“(4) ‘wholesale energy products’ means the following contracts and derivatives, irrespective of where and how they are traded:</i>		
<i>(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;”;</i>		

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[g] paragraph (7) is replaced by the following:		
“(7) ‘market participant’ means any person, including transmission system operators and persons professionally arranging or executing transactions when trading on their own account, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;”;		
[h] the following new paragraph (8a) is inserted:		
“(8a) 'person professionally arranging or executing transactions' means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products;”;		
[i] the following new paragraph (10a) is added:		

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“(10a) ‘the Agency’ or ‘ACER’ means the European Union Agency for the Cooperation of Energy Regulators;”;		
[j] the following points are inserted:		
“(16) ‘registered reporting mechanism’ or ‘RRM’ means a person registered under this Regulation to provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency on behalf of market participants;		
(17) ‘inside information platform’ or ‘IIP’ means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants.		

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(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		

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directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);		
(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.		
(21) ‘LNG trading’ means bids, offers or transactions for the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result		

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in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.		
(22) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.		
(23) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading.		
(24) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology to be established by ACER.		

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(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.”;		DK finds that amending a “bad order” should not be considered insider trading, i.e. it should be possible to amend orders because of mistakes etc.
[4] Article 4 is amended as follows:		
[a] in paragraph 1 the following 2 nd subparagraph is added:		

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“Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. and complete, correct and timely assessment of the information by the public.”;		DK finds it positive to ensure fast access. However, it is important that the provision does not lead to disproportionate administrative and financial burden for market participants to participate in IIP system.
[b] paragraph 4 is replaced by the following:		
The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes , complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article.		
[5] The following Article 4a is inserted:		

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“Article 4a		
Authorisation and supervision of IIPs		
1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements of this Article and has authorised the operation. The register of IPPs shall be publicly available and shall contain information on the services for which the IIP is registered. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn a registration in accordance with paragraph 5, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.		
2. An IIP shall have adequate policies and arrangements in place to make public the inside		

REMIT Regulation

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Commission proposal	Drafting Suggestions	Comments
information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.		
3. The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:		
(a) the message ID and event status;		
(b) the publication date, the time and the start and stop of the event;		

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(c) the market participant name and the market participant identification;		
(d) the bidding or balancing zone concerned;		
(e) and, where applicable:		
(a) the type of unavailability and the type of event;		
(b) the unit of measurement;		
(c) the unavailable, the available and the installed or technical capacity;		
(d) the reason for the unavailability;		
(e) the fuel type;		

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Commission proposal	Drafting Suggestions	Comments
(f) the affected asset or unit and its identification code.		
4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.		
An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have		

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back-up facilities in place in order to offer and maintain its services at all times.		
The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request re-transmission of any such erroneous reports.		
5. The Agency may withdraw the registration of an IIP where the latter:		
(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;		
(b) obtained the registration by making false statements or by any other irregular means;		

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(c) no longer meets the conditions under which it was registered;		
(d) has seriously and systematically infringed this Regulation.		
When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.		
The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP.		
6. The Commission shall, by means of implementing acts, specify:		

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Commission proposal	Drafting Suggestions	Comments
(a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;		
(b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;		
(c) the concrete organisational requirements for the implementation of paragraph 4.		
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;		
[6] The following Article 5a is added:		
“Article 5a		
Algorithmic trading		

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

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Commission proposal	Drafting Suggestions	Comments
that they meet the requirements laid down in this paragraph.		
2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of its Member State and to the Agency.		
The national regulatory authority of the Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk controls that it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems.		

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Commission proposal	Drafting Suggestions	Comments
The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.		
3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly.		
The national regulatory authority of the home Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.		

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Commission proposal	Drafting Suggestions	Comments
The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.		
4. This article is without prejudice to obligations under Directive (EU) 2014/65.”;		
[7] in Article 7, paragraph 1 is replaced by the following:		
“1. ACER shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation or attempts thereof. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.”;		
[] New articles from 7a to 7d are added:		

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Commission proposal	Drafting Suggestions	Comments
“Article 7a		
Tasks and powers of ACER to carry out price assessments and benchmarks		
1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.		
2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract		

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Commission proposal	Drafting Suggestions	Comments
established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.		
3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.		
Article 7b		
Publication of LNG price assessments and benchmark		

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Commission proposal	Drafting Suggestions	Comments
1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.		
2. For the purposes of this Article, ACER may make use of the services of a third party.		
Article 7c		
Provision of LNG market data to ACER		
1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality		

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Commission proposal	Drafting Suggestions	Comments
transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).		
2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 29.		
3. Where appropriate, ACER shall, after consulting the Commission, issue guidance on:		
(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and		

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Commission proposal	Drafting Suggestions	Comments
(b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.		
4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures.		
Article 7d		
Business continuity		
ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price		

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Commission proposal	Drafting Suggestions	Comments
assessments and LNG benchmarks, taking into account the views of LNG market data contributors.”;		
[8] Article 8 is amended as follows:		
[a] the following paragraph 1a is inserted:		
“(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, those market places shall make available to the Agency data relating to the order book or, upon the Agency’s request, give the Agency access to the order book so that it is able to monitor trading.”;		
[b] in paragraph 2, the second subparagraph is replaced by the following:		

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“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:		

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Commission proposal	Drafting Suggestions	Comments
(d) an organised market place, a trade-matching system or other person professionally arranging or executing transactions;		
(ii) the following second subparagraph is added:		
“The information shall be provided through registered reporting mechanisms.”;		
[e] paragraph 5 is replaced by the following:		
“5. Market participants shall provide ACER and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, and with inside information publicly disclosed in accordance with Article 4, for the purpose of monitoring trading in		

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Commission proposal	Drafting Suggestions	Comments
wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.”;		
[9] in Article 9, paragraph 1 is replaced by the following:		
“1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall declare an office , in a Member State in which they are active and register with the national regulatory authority of that Member State.”;		
[10] the following Article 9a is inserted:		

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Commission proposal	Drafting Suggestions	Comments
“Article 9a		
Authorisation and supervision of the Registered Reporting Mechanisms		
1. The operation of an RRM shall be subject to prior authorisation by the Agency in accordance with this Article.		
The Agency shall authorise parties as RRM where:		
(a) the RRM is a legal person established in the Union; and		
(b) the RRM meets the requirements laid down in this Article.		
The authorisation to operate as RRM shall be effective and valid for the entire territory of the		

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Commission proposal	Drafting Suggestions	Comments
Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union.		
An authorised RRM shall comply at all times with the conditions for authorisation referred to in this Article. An authorised RRM shall, without undue delay, notify ACER of any material changes to the conditions for authorisation.		
The Agency shall establish a register of all RRMs in the Union. The register shall be publicly available and shall contain information on the services for which the RRM is authorised and it shall be updated on a regular basis. Where the Agency has withdrawn an authorisation of an RRM in accordance with paragraph 4, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.		

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Commission proposal	Drafting Suggestions	Comments
2. The Agency shall regularly review the compliance of RRM's with this Regulation. For this purpose, RRM's shall report on an annual basis about their activities to the Agency.		
3. RRM's shall have adequate policies and arrangements in place to report the information required under Article 8 as quickly as possible, and no later than within the timing laid down in the implementing acts adopted pursuant to paragraph 5 of this Article.		
RRM's 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.		

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RRMs shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The RRM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at according to the timing laid down in the implementing acts adopted pursuant to Article 8(2) and (6).		
RRMs shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to		

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the market participant and request re-transmission of any such erroneous reports.		
RRMs shall have systems in place to enable the RRM to detect errors or omissions caused by the RRM itself and to enable the RRM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the Agency.		
4. The Agency may withdraw the authorisation of an RRM where RRM:		
(a) does not make use of the authorisation within 18 months, expressly renounces the authorisation or has provided no services for the preceding 18 months;		
(b) obtained the authorisation by making false statements or by any other irregular means;		

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(c) no longer meets the conditions under which it was authorised;		
(d) has seriously and systematically infringed this Regulation.		
An RRM whose authorisation has been withdrawn shall ensure orderly substitution including the transfer of data to other RRMs and the redirection of reporting flows to other RRMs.		
The Agency shall, where relevant, without undue delay, notify the national competent authority in the Member State where the RRM is established of a decision to withdraw the authorisation of an RRM.		
5. The Commission shall by means of implementing acts specify :		

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Commission proposal	Drafting Suggestions	Comments
(a) the means by which an RRM shall comply with the information obligation referred to in paragraph 1; and		
(b) the concrete organisational requirements for the implementation of paragraphs 2 and 3.		
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;		
[11] Article 10 is amended as follows:		
[a] paragraph 1 is replaced by the following:		
“1. ACER shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with the Commission, national regulatory authorities, competent financial market authorities national competition authorities, ESMA and other		

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Commission proposal	Drafting Suggestions	Comments
<i>relevant authorities at Union level. Before establishing such mechanisms, ACER shall consult with those authorities.”;</i>		
[b] the following paragraph 1a is inserted:		
“(1a) National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the competent financial market authorities, the national competition authorities, the national tax authorities and EUROFISC and other relevant authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those parties.”;		
[c] the following paragraph 2a is inserted:		
“2a. National regulatory authorities shall give access to the mechanisms referred to in		

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paragraph 1a of this Article only to authorities which have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1).”;		
[13] Article 12 is amended as follows:		
[a] in paragraph 1, the second subparagraph is replaced by the following:		
“The Commission, national regulatory authorities, competent financial authorities of the Member States, national tax authorities and EUROFISC, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Article 4(2), Article 7(2) Article 8(5) or Article 10 and shall take steps to prevent any misuse of such information including according to applicable data protection laws.”;		

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Commission proposal	Drafting Suggestions	Comments
[b] paragraph 2 is replaced by the following		
“2. Subject to Article 17, ACER may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ACER shall not be prevented from publishing information on organised market places, IIPs, RRM s 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		

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Commission proposal	Drafting Suggestions	Comments
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;		

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(b) in collaboration with other authorities; or		
(c) by application to the competent judicial authorities.		
Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging or executing transactions as referred to in point (d) of Article 8(4).”;		
[b] the following paragraphs (3) to (9) are added:		
“3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation		

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Commission proposal	Drafting Suggestions	Comments
throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.		
4. The Agency may exercise its powers to ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied where:		
(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or		
(b) acts are being or have been carried on wholesale energy products for delivery in at least two Member States and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or		

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(c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or		
(d) the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least three Member States.		
5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.		

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Commission proposal	Drafting Suggestions	Comments
6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same cases by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.		
7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.”;		

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Commission proposal	Drafting Suggestions	Comments
[15] The following articles 13a to 13d are inserted:		
“Article 13a		[DK would like to question the reason for new competences to ACER regarding down-raids. It would be preferable to have an impact assessment made regarding the benefits this entails compared to the burdens it applies on market participants. It should be mentioned that ACER investigations should not conflict with Member States’ own legal systems and processes of investigation.]
On-site inspections by the Agency		
1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.		

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Commission proposal	Drafting Suggestions	Comments
2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.		
3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.		DK finds that this paragraph could be too restricting for companies. Companies who have obligations to deliver a product which necessitates the daily functioning of certain activities in the company, may not be able to honor these contracts if ACER is able to seal premises, property and books or records. There might furthermore be a risk that new companies acting in good faith will cease to enter the energy markets due provisions of this kind

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4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.		
5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.		
6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and		

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purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.		
7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon request.		

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Commission proposal	Drafting Suggestions	Comments
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.		

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Commission proposal	Drafting Suggestions	Comments
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		

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Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.		
Article 13b		DK would like to ask the Commission if there has been made an assesment as to how often ACER expects to make use of regulation 13a and 13b? The current draft suggests that the articles can become a significant burden for market participants in the energy sector.
Request for information		
1. At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:		

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(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		

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appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.		
3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.		
4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition of		

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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		

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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.		

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Commission proposal	Drafting Suggestions	Comments
2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.		
3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.		
Article 13d		
Mutual assistance		
1. In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.”;		

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Commission proposal	Drafting Suggestions	Comments
[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:		

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(a) identify breaches of Article 3, 4 or 5 ;		
(b) guarantee that their employees carrying out surveillance activities for the purpose of this Article are preserved from any conflict of interest and act in an independent manner.”;		
[16] Article 16 is amended as follows:		
[a] in paragraph 1, the fourth sub-paragraph is replaced by the following:		
“National regulatory authorities, competent financial authorities , the national competition authority and the national tax authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the	“ The Agency as well as 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	It is important that ACER investigations does not conflict with existing investigations in the Member States, and that market participants do not risk being “double investigated”.

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enforcement of this Regulation and relevant financial and competition law.”;	Regulation and relevant financial and competition law.”;	
[b] in paragraph 2, the following third subparagraph is added:		
“No later than 30 days before adopting a final decision on a breach of this Regulation, national regulatory authorities shall inform the Agency and provide it with a summary of the case and the envisaged decision. The Agency shall maintain a public list of such decisions under this Regulation, including the date of the decision, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. For the purpose of that publication, national regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.”;		

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[c] in paragraph 3, the following point (e) is added:		
“(e) the Agency and the national regulatory authorities shall inform the competent national tax authorities and EUROFISC where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a tax fraud.”;		
[16] the following Articles 16a and 16b are inserted:		
“Article 16a		
Delegation of tasks and responsibilities		
1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to other national regulatory		

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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.		

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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		We wish to better understand if there are any consequences in not complying with the proposed guidelines or recommendations? Can market actors or national regulatory authorities be fined or prosecuted in any way if choosing to not comply?
1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and		

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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.	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.	We wish to better understand, when the Commission or ACER find it appropriate and not appropriate to conduct public consultations. We would assume that public consultations would be appropriate in any case.
3. The national regulatory authorities and market participants shall make every effort to comply with those guidelines and recommendations.		

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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.	Within four 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.	DK finds that two months are not necessarily sufficient for national regulatory authorities to decide if they intend to comply or not. It is feared that this paragraph in combination with paragraph 2 (“where appropriate”) can lead to rushed decisions that are not well thought through and with limited stakeholder consultation.
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.		

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6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation.		
7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.”;		
[18] in Article 17, paragraph 3 is replaced by the following:		
“3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant cannot be identified, without prejudice to cases covered by criminal law, the		

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other provisions of this Regulation or other relevant Union legislation.”;		
[19] Article 18 is replaced by the following:		
“1. The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.		
Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the		

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power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).		
The Member States shall notify, in detail, those provisions to the Commission and to the Agency and shall notify it without delay of any subsequent amendment affecting them.		
2. Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:		
(a) adopt a decision requiring the person to bring the breach to an end;		

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(b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;		
(c) issue public warnings or notices;		
(d) adopt a decision imposing periodic penalty payments;		
(e) adopt a decision imposing administrative pecuniary sanctions;		
in respect of legal persons, maximum administrative pecuniary sanctions of at least:		
i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;		DK finds that 15 % is a high level. For some companies this could turn into billions of euro.
ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;		

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iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.		
in respect of natural persons, maximum administrative pecuniary sanctions of at least:		
i. for breaches of Articles 3 and 5, EUR 5 000 000;		
ii. for breaches of Article 4 and 15, EUR 1 000 000;		
iii. for breaches of Article 8 and 9, EUR 500 000.		
Notwithstanding paragraphs (e), the amount of the fine shall not exceed 20 % of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed		

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20 % of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.		
3. Member States shall ensure that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.”;		
Article 2		
Amendments to Regulation (EU) 2019/942		
Regulation (EU) 2019/942 is amended as follows:		
[1] in Article 6, paragraph 8 is deleted.		

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[2] in Article 12, point (c) is replaced by the following:		
(c) Pursue and coordinate investigations pursuant to Articles 13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011.		
[3] in Article 32, paragraph 1 is replaced by the following:		
“1. Fees shall be due to ACER for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also		

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cover the costs of ACER for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.”.		
Article 3		
Amendments to Commission Implementing Regulation (EU) No 1348/2014		
Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:		
[1] Article 7a is added:		
“Article 7a		
LNG market data quality		
1. LNG market data shall include:		

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(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:		

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(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;		

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(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.		

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3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.”.		
Article 4 Entry into force		
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.		
This Regulation shall be binding in its entirety and directly applicable in all Member States.		
Done at Strasbourg,		
For the European Parliament For the Council		

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Commission proposal	Drafting Suggestions	Comments
The President The President		
	End	End