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CONTRIBUTION

From:	General Secretariat of the Council
To:	Working Party on Energy
Subject:	Comments from LV CZ IE DK IT BG NL ES LT PL HU on REMIT REV 3 (9202/23) - consolidated table

Delegations will find in the annex the consolidated version of the comments from LV CZ IE DK IT BG NL ES LT PL HU on the REMIT REV 3 (ST 9202/23).

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2023/0076 (COD) Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL	DK: (Comments): In light of the energy crisis and highly volatile prices that led to extreme price spreads and large potential earnings and losses among some market actors, we consider it relevant to also address the risk-taking behavior of market participants and systemic risks resulting from trading electricity on the wholesale market in general and through financial derivatives. The proposed changes to the directive already address the management of risks as regards retail suppliers. Excessive risk-taking on the wholesale market could potentially result in cascade effects, which eventually could affect consumers, create financial instability and threatens security of supply. Due to the cross-border nature of this, we find it most relevant to address this in common EU legislation.

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	We would therefore ask the Commission for an assessment of systemic risk in the electricity markets, including the wholesale market. BG: (Comments): GENERAL COMMENTS AN MAIN CONCERNS ON THE PROPOSAL 1. NEW ACER POWERS **1.1. The new ACER supervisory and enforcement powers**, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4). **1.2. (The new Article 13(4a) - ACER should not exercise powers and supervise the fulfilment of the requirements of Article 4, and Article 2(1) of REMIT – which is in fact supervision of the fulfilment of the transparency requirements**. This should remain within the strict responsibility of the NRAs. The NRAs are in a position and competent to surveille and investigate eventual breaches of related to fulfillment of the transaprency reqirements and the disclosure of inside information. Please consider that the information defined in Article 2(1) includes also the full set of transparency data (under the Transparency Guidelines and network codes) that the Market Participants/TSOs should publish. At present, this is within the competences of the NRAs. This new provision authorizes ACER to investigate every issue related to data publication because the EU enerhy market

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	is well interconnected and it could be considered that each data, subject to transparency obligations, could have effect on the market in more than 3 Member States. **1.3. The eventual new ACER powers** envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d should be **funded by the general ACER budget** but **not** by increasing the fees for data reporting or by introducing new fees for collection of inside information (because otherwise, the new investigatory powers of ACER and their performance towards entities that are in breach of REMIT will be paid by innocent third parties). 2. INSIDE INFORMATION **2.1. The collection if inside information should be kept outside the REMIT fee regime;** **The collection of inside information by ACER should NOT be included in the REMIT fee regime because otherwise this will have detrimental effect on the market transparency.** The disclosure of inside information is made and meant for the use by the market. **The inside information provision, via special channel to ACER is an auxiliary process** – facilitating ACER and ACER's ex-post monitoring and surveillance activities. ACER collects inside information in order to detect eventual occasions of breaches of Article 3 of Regulation (EU) No 1227/2011. The **disclosed inside information is publicly available** and its monitoring could be **done without** special data collection. Furthermore, the disclosed inside information by nature is fundamental data (information about capacity, use of capacity, capacity limitations). As per Commission Decision 2020/2152, the collection of fundamental data is not subject for REMIT fees. The eventual inclusion of the inside information disclosure under REMIT fees regime may have detrimental effect on the market transparency. Due to the lack of clear thresholds for defining which information is really significant for the market, to be "on the safe side", the market participants currently publish more details about more occasions of capacity

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	limitations. It is a matter of decision and organization at the stakeholders' side how to use and filter the published data that they deem valuable. If the inside information data collection is included in the REMIT fee regime, this may limit the scope of the published data which may have negative effect for the market. Taking into account that the collection of the disclosed inside information is to ease the work of ACER and the NRAs, and considering that by nature the disclosed inside information is fundamental data, the collection of inside information should be excluded from REMIT fees regime or at least should be treated as "fundamental data" in the context of the application of the REMIT fees (the individual UMM data transmissions to ACER should not be charged). Moreover, the entities that have both: (1) transparency obligations - to publish interruptions data and information about the capacity, its use and/or limitations of capacity (The transparency data published on ENTSOG and ENTSO-E platfroms is reported to ACER, including the interruptions data); and (2) obligations to disclose inside information about the same events – (The UMMs (inside information) for the interruption events are submitted to ACER from the IIPs/TPs); **should not be double charged for providing several times one and the same information to ACER via different channels - based on different REMIT provisions** The revision of Article 32, paragraph 1 suggests that ACER costs for exercising the activities under Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 shall be covered by the fees collected by the RRMs and the IIPs. As of 2020, the current ACER REMIT activities are covered by the fees collected from the RRMs 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. This would mean that, as per the new revision of Article 32 of Regulation (EU) 2019/942, ACER's costs for executing the extended power in line with Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 will be covered by the fees eventually paid for inside information data collection. The main market actors, disclosing inside information are (the major volume of inside information is published by) the TSOs and the generation units. This would mean that the main financial burden for covering ACER costs for fulfilling Articles 13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011 will be paid by the TSOs and the generation units

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	(which are not necesserily the parties that invoked ACER costs for executing the powers under Articles 13, 13a, 13b and 16). It must be considered, that those parties have obligations to publish information for the same capacity limitations also under the respective Transparency regulations. This transparency (interruptions) data is reported by ENTSOs to ACER and fees for this reporting is paid by the ENTSOs (through the TSOs, generation units) to ACER. This would mean that the same entities will pay twice for publication and collection of equal information and will be the main funders of ACER costs for performing Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011. This makes the suggested revision of Article 32 (1) of Regulation (EU) 2019/942 highly disproportionate. Having regard to the above, we are proposing: - **To NOT include the inside information disclosure and collection in the REMIT fee regime**. **2.2. The concept for the "protracted process"** will make the process for disclosure of inside information very complex and will increase the risk of unintentional incompliance. This concept should be abandoned; **2.3. Thresholds for inside information disclosure -** the **market needs clearly defined thresholds**, which will help the market participants easily to estimate/evaluate the significance of the effect from particular event on the wholesale energy market. This will in turn improve the energy market transparency and will reduce the risk of unintentional incompliance with the relevant provisions for inside information disclosure. **2.3.** Proposed revision of Article 4(4) of REMIT The proposed **revision of Article 4(4) contradicts and is not in line with the general Transparency requirements stemming from Regulations (EU) No 543/2013 (EL market) or (EC) No 715/2009 (Gas market), the network codes and to Article 2(1)(a) of REMIT**. According to the Transparency regulation, the required transparency data must be published in predefined format on centralised European Transparency Platforms. The proposed revision of Article 4(4) states that **the data publication on centralised European Transparency Platforms**, established by ENTSOG and ENTSO-E **does NOT constitute simultaneous, public and timely disclosure of inside information**, which is incorrect and inconsistent with the requirements of **from Regulations (EU) No 543/2013 (EL market) or (EC) No 715/2009 (Gas market) and the network codes and to Article 2(1)(a) of REMIT.**

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	We would suggest that the proposed revision of Article 4(4) is modified as follows: *"The publication of inside information, including in aggregated form, in accordance with Regulation ~~(EC)~~ ~~No 714/2009~~* ***(EU) No 543/2013*** *or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes* ***, simultaneous, complete and effective public disclosure but not in all cases disclosure in a timely manner in the meaning of paragraph 1 of this Article****.~~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".~~"* Or, alternatively, the text from the current regulation shall be preserved: "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 simultaneous, complete and effective public disclosure."* **3.** REGISTERED REPORTING MECHANISMS **3.1. In the definition of the RRM, the notion "provide services for reporting" should be deleted** because it excludes the possibility of the individual MPs to register as RRMs and report their own data. **3.2. The RRMs should not be deemed liable for data quality issues of the data provided by the market participants related** to *"completeness, identify omissions and obvious errors"*. The RRMs cannot be deamed liable for the resubmission of the eventually erronous data because this is MPs' responsibility and at their discretion. **The RRMs could technically validate the data provided for reporting by the MPs and inform them by alarm, return receipt, etc. about potential issues with the data completeness and/or format**. The MPs are the parties with obligations to provide data to ACER and it is their responsibility to initiate the eventual resubmission of data to the RRM, after being alerted by the RRM about a data quality problem at the MP side. **3.3. The RRM cannot be liable or responsible for MP's omissions or disregard of the RRM indication of a data quality**

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	issue. Article 9a(3) should be revised as follows: *'RRMs shall,* ***together with market participants, enable a mechanism allowing to*** ~~*have systems in place that can*~~ *effectively check transaction reports for completeness*~~*, identify omissions*~~ *and obvious errors related to the* ***technical validity of the data*** *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 reports."*~~ **3.4.** In case of withdrawal of the RRM authorisation, the **RRM should not** be obliged to *"transfer of data to other RRMs and the redirection of reporting flows to other RRMs."* It is MPs' responsibility to report data to ACER in accordance with the REMIT, respectively it is MPs' responsibility **to arrange their contractual relations and technical measures for exchange with a new RRM**. The provision for *"redirection of reporting flows to other RRMs"* contradicts to the concept for "withdrawal of the RRM authorization. The RRMs cannot transfer the data or redirect the reporting to another RRM on their own decision or on behalf of the MPs because: The MPs should be free and allowed to select and arrange its contractual and technical relations with a new RRM(s); The RRM with withdrawn authorization suffers from issued which are incompatible for the provision of reporting services, regardless of the destination – ACER ARIS or another RRM. It would be reasonable and meaningful, the "suspended" RRM to have obligations to: - Complete all pending (at the moment of withdrawal of authorization) data submissions to ACER; and - Provide to the MPs the historically reported data and the ACER ARIS return receipts (that the RRM is obliged to store for a period of at least 12 months – according to "ACER RRM Requirements"), in decrypted form and in the respective electronic format, in accordance with Article 10(3) of Regulation (EU) No 1348/2014 (REMIT Implementing Regulation).

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	If an RRM is incompliant with the requirements to perform reporting activities to ACER, it should not be in a position to "redirect" the reportable data to ACER through another RRM. Article 9a(5) should be revised as follows: ***"****Where the Agency has withdrawn authorisation, the RRM shall ensure orderly substitution including* ~~*the transfer of data to other RRMs and the redirection of reporting flows to other RRMs*~~ ***completion of the initiated reportings to ACER and provision to each organization that used the RRM reporting services (MP, OMP, etc.) the reported files to ACER on behalf of the respective party together with the return receipts issued by ACER for the relevant reports. This historical reports and receipts must include at least the data reported to ACER within the previous 12 months from the date of the withdrawal of the RRM authorization. This data shall be provided in the relevant electronic format, as defined by ACER in accordance with Article 10(3) of Regulation (EU) No 1348/2014, in decrypted form.****"*** **4.** INSIDE INFORMATION PLATFORMS **4.1. The requirements for mandatory provision of Application Programming Interface should be deleted;** **The specification of the communication channel is a very technical detail and should be kept out of REMIT regulation. It should be specified in the ACER documentation or in Implementing Regulation describing the requirements towards the IIPs.** The obligations of the IIPs suggested by the document: - To be available and operable "at all times" – 100% of the time; - To provide Application Programming Interface (API) for all stakeholders; - To provide access to the published data to all stakeholders – including via API – free of charge; - To provide publication services to the MPs "as a reasobable cost" **are incompatible and impossible for simultaneous fulfilment.**

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	Tens, hundreds or thousands simultaneous API calls can easily destroy the platform performance and make it unavailable which contradicts to its main purpose – to allow MPs at any time to publish inside information and this data to be available to the whole market. It is not possible for a system to offer API calls without subscription and without limitations to all potential stakeholders, and at the same time these simultaneous API calls to the platform to not affect its performance and availability. This could be organized but the required resources would be extremely expensive and the IIP srevices in such case could not be offered neither for free, nor at a "reasonable" price. **4.2. The IIPs cannot be liable or responsible for MP's omissions or disregard of the IIP indication of a data quality issue.** The IIPs' systems could only check and indicate technical issues with the provided content regarding missing mandatory data and wrong/invalid data format. The check for completeness and omission is one and the same process (if a data set is complete – there are no omissions). **However, the eventual resubmission of the erronous data is at MP's discretion and subject to MP's decision, which could not and should not be included in the obligation of the IIPs.** Article 4a(4) should be revised as follows: *"The IIP, **together with the market participants,** shall **enable a mechanism** ~~have systems in place~~ that can quickly and effectively check inside information ~~reports~~ **data set provided by the market participoant** for completeness~~, identify omissions and obvious errors~~ **and format validity of the elements**, and ~~request to receive a corrected version of such~~ **indicate any errors to the issuing market participant, who in tern shall resubmit the corrected data to the IIP for publication."***

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	4.3. In case of withdrawal of the IIP authorisation, the **IIP should not** be obliged *to "transfer of data to other IIPs and the redirection of reporting flows to other IIPs"* It is MPs' responsibility to publish inside information in accordance with the Regulation. The operator of the suspended IIP might have obligations to complete all pending (at the moment of withdrawal of authorization) data submissions **to ACER** and to provide to the MPs the data – historically published on the IIP during the previous 5 years (in format allowing quantitative analysis). The inside information flow is as follows: MP->IIP -> ACER. The published on an IIP inside information is obtained and used by the stakeholders at the time of its publication and validity. The published on an IIP inside information is submitted to ACER within the same day of data publication and there **is no sense this historically published and submitted to ACER data to be redircted to another IIP.** The only meaningful exercise, in case of IIP authorrization withdrwal would be: - Completion of the initiated data submissions from the IIP to ACER; - Provision of the historically published data to the relevant Market Participants, that might have obligations under some national regulations to store such data for a period of time (maximum 5 years) and to provide it to the relevant NRA upon request. Currently, in accordance with ACER Guidance for REMIT implementation, the IIPs are obliged to keep the published inside information for a period of 5 years). However, the operator of the suspended IIP is not in a position and could not arrange the relations (technical, contractual) between its MP-clients and the other IIPs, and to transfer MPs' data to another IIP that is not chosen by the affected MPs. Article 4a(7) should be revised as follows: *"When the Agency has withdrawn an authorisation, the IIP concerned shall ensure*

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	completion of the initiated reportings to ACER and provision to each market participant of its own full set of published data during the previous 5 years from the date of withdrwal, in an electronic format allowing quantitative analysis. ~~*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,* ***but not less than three months*** *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."*~~ **5.** PERSON PROFESSIONALLY ARRANGING (AND EXECUTING) TRANSACTIONS **5.1.** The term "*Persons professionally arranging transactions*" from the current regulation should be preserved. The notion into "*Persons professionally arranging* ***and executing*** *transactions*" is directly taken from MAR. The trade with financial and with purely energy products is different. It must be considered that the market Participants on the energy market execute transactions because they are acting on their own. The **notion "execution" in the term *Persons professionally arranging and executing transactions*" is not appropriate for the energy market because it will turn every energy Market Participant into a person with surveillance with obligations under Article 15 of REMIT.** **5.2.** The PPAT should **not monitor the disclosure of inside information - The PPATs are not able to carry out surveillance and to be aware about all details related with their client MPs' publication behaviour.** **The PPATs do not have mechanisms to monitor the disclosure of inside information and the fulfilment of requirements of Article 4 of REMIT by their clients/MPs** because the MPs are free to publish inside information on whatever IIP and do not have obligation to inform their OMPs/brokers/PPAT where and whether they have disclosed inside information. **6.** TECHNICAL DETAILS AND REQUIREMENTS

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	The proposal for amendment of Regulation (EU) No 1227/2011 contains **many technical details and requirements** which are more suitable and appropriate to be defined in Implementing Acts/Implementing Regulation and/or Instructions/Guidance/Recommendations/Manuals that ACER is obliged to issue in accordance with Article 16 of Regulations (EU) No 1227/2011 and Article 10(3) of Regulations (EU) No 1348/2014. **7.** TIMELINE – URGENCY OF THE REVISION PROCESS The urgency of the REMIT revision process must be reconsidered because it will invoke more issues for the market than it is envisaged to solve. PL: (Comments): Comments proposed below by Poland refer to changes made both as part of REV2 and REV3.
amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market	NL: (Drafting): amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market ~~manipulation~~ **abuse** in the wholesale energy market NL:

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	(Comments): The regulation is agains both market manipulation and insider trading, that is market abuse.
(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	BG:

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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	(Drafting): (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. BG: (Comments): *It is not necessary to stress that transparency and monitoring capacities are insufficient, which is debatable and besides gives the impression that the current framework is completely non-operational which is not true. It is enough to highlight that they could be further increased.* ES:

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enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.	(Drafting): (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 **market abuse** ~~attempts of market manipulation~~, Regulation (EU) No 1227/2011 should be amended to further ensure ~~address~~*~~increase~~* ~~insufficient~~ transparency and increase 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. ES: (Comments): Union protection should not be limited only to the 'attempts of market manipulation'. Market abuse is more appropriate notion covering market manipulation, attempts of market manipulation and insider trading. PL: (Drafting):

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	(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 market abuse cases ~~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. PL: (Comments): REMIT is changed not only to protect against attempts of market manipulation, but also against market manipulation and insider trading. Therefore, it is better to use the term "market abuse cases" used by the legislator in the subsequent recitals.
(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance.	ES: (Drafting):

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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[1], including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation	(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[2], including with respect to the definitions of market manipulation and inside information respectively. ~~More specifically~~Therefore, the definition of market manipulation in Regulation (EU) No 1227/2011 should be ~~slightly~~ adjusted to align with 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,

[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).

[2] 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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(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	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 or 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 market manipulation, for instance when it artificially causes prices to be at a level not justified by market forces of supply and demand.** ES: (Comments): ES agrees with the last part of the recital mentioning capacity withholding. This inclusion serves to explicitly recognize this behaviour as market manipulation, while not excluding others from being considered market manipulation. PL: (Drafting): (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

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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**	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[3], 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 without legitimate technical, regulatory and/or economic justification of available capacity or~~of~~ production, carried out by any market participant with the relative ability to influence the price or the interplay of**

[3] 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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interplay of supply and demand of a wholesale energy product, could amount to market manipulation, for instance when it artificially causes prices to be at a level not justified by market forces of supply and demand.	**supply and demand of a wholesale energy product, could amount to market manipulation, for instance when it artificially causes prices to be at a level not justified by market forces of supply and demand.** PL: (Comments): We propose to amend this recital to reflect ACER's guidelines on. "Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency 6th Edition"
(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.	BG: (Drafting): ~~(3) The definition of inside information should also be adjusted to **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~~

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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	~~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 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.~~ BG: (Comments): **The concept for the "protracted process" will have negative implications on the process of the inside information disclosure. It will turn the evaluation and the decision for disclosure to a very complex process. The introduction of this concept increases the risks of unintentional incompliances of the market participants with the provisions of Article 4.** **Furthermore, it contradicts to the definition of "inside information" which must be "precise".** This concept may discourage the market participants from action on the EU energy market which could have negative implications on the liquidity. The idea for the "protracted process" and for disclosure of inside information for each step of a process occurring in stages was introduced several years ago by ACER in the non-binding ACER Guidance for REMIT implementation. The energy market had and have serious concerns regarding its application in practice because it makes the process of inside information disclosure even more difficult, involving more

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criteria laid down in this Regulation for inside information.	resources and requiring more complex analysis before the disclosure. For instance: When information is disclosed at a very early stage and is of a preliminary nature, it may mislead market participants, rather than contribute to efficient price formation and address the information asymmetry. In a protracted process, given the different iterations information has still to go through, the information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the market participants should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise. The inside information disclosure process must be **straight thru because usually this disclosure is under emergency conditions.** The publication of inside information is done by technical/operational/dispatching personnel which needs clear and precise instructions to follow and cannot perform complex legal analysis whether an intermediate step of a long process could have influence on the wholesale energy prices. Instead of this concept, the **market needs clearly defined thresholds**, which will help the market participants easily to estimate/evaluate the significance of the effect from particular event on the wholesale energy market. This will in turn improve the energy market transparency and will reduce the risk of unintentional incompliance with the relevant provisions for inside information disclosure.

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	Currently, the market participants have difficulties in applying the definition and requirements for inside information **due to the lack of clear and precise threshold on what information would be significant enough to influence the wholesale energy prices,** what kind of events (scope, level of severity, limitations etc.) shall be disclosed and etc. To be "on the safe side" and avoid penalties for incompliance with the provisions for inside information disclosure, the majority of the market participants publish data about all occasions of capacity limitation. This floods the market with data that need to be further analysed and filtered before making use of it for the real trading process. **The process of inside information disclosure, which usually is invoked by an emergency, should be simplified, streamlined and based on clear and precise pillars that should ensure the timeliness, value, usability and quality of the disclosed data.**
(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*~~	ES: (Drafting): 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~~Union competition law to the practices covered by this

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competition law to the practices covered by this Regulation.	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.	

Presidency compromise text	**Drafting Suggestions** **Comments**
(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, RRMs **in compliance with**~~*according to*~~ applicable data protection laws in the interest of improving transparency of wholesale energy markets and	BG: (Drafting): (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 **general aggregated** information **about the complainace with this Regulation of the** ~~**on**~~ organised market places, IIPs, RRMs **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. BG: (Comments): It is not clear how it will be evaluated that the collected at ACER REMIT information is *"no longer sensitive from a commercial or security viewpoint"*.

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provided it does not distort competition on those energy markets.	Regarding the possibility of ACER to publish information about the OMPs, IIPs, RRMs – it must be specified that this could be only general **aggregated information related to the REMIT compliance of those entities.** **Please consider that more than 50% of all RRMs are Market Participants reporting only their own data – about their own trading activities.** If trade data, even in general aggregated form, is published by ACER for those entities – this may constitute commercially sensitive information. NL: (Drafting): (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') and NRA's 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, RRMs **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.

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	NL: (Comments): NL considers it important that NRA's are also able to inform citizens and companies of their member state on energy price, liquidity, instruments etc. without harming commercial interests. Hence the suggestion to add 'and NRA's' or to add 'Without prejudice to the role of NRA's at the beginning of the text.
(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 sh**ould**~~*all*~~ be duly authorized pursuant to the requirements of that Directive.	
(8) The use of trading technology has evolved significantly in the past	PL:

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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.	(Drafting): (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. However, it is important to specify that the provisions regarding algorithmic trading that are included in this Regulation, do not apply to transmission system operators' areas of activity that use automation (e.g. activation of balancing energy) insofar as these automated processes are addressed by the Commission Regulation 2017/2195 establishing a guideline on electricity balancing. PL: (Comments): TSOs use automation of their processes (e.g. activation of balancing energy) to fulfil their obligations. It is worth to ensure regulatory certainty that provisions concerning algorithmic trading do not apply to TSO's tasks covered by Regulation 2017/2195.

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(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.	BG: (Drafting): (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~~ **negative** effect on ~~transparency~~ **ACER's and NRAs' possibilities to perform their monitoring obligations and thus – on the** 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. BG: (Comments): The level of **transparency** is related to the completeness, accuracy and quality of the **publicly available data**. The **reported trade data to ACER is NOT public** and the data quality issues with the reported data **do not have direct implication on the market transparency** but on ACER's and NRAs' possibilities to analyse it

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	and perform their monitoring/surveillance activities. Some of the data quality issues are due to incomplete and/or inconsistent guidance and recommendations issued by ACER. The highest quality of the reported data is related and dependant on the clarity and quality of the guidance, manuals, specifications and recommendations issued by ACER. Respectively, this regulation should ensure that all ACER guidances, manuals, specifications and recommendations should be properly and adequately consulted with the market and/or the concerned stakeholders.
(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	IE: (Drafting): 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~~.

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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.	IE: (Comments): In some Member States, regulators may find it more effective to delegate the drafting of the report. EU level assessment complements national assessments by estimating the potential to share flexibility resources crossborder between MS. Such an EU level assessment allows for an independent but coordinated development that translates to savings of taxpayers' money and a speedier rollout of flexible resources. In order not to delay the implementation of national assessments, the first EU level assessment kicks-in only for the second cycle of national assessments. Ireland TSO believes that it would be both ineffective and inefficient to introduce order book providers as PPATs (Persons Professional Arranging Transactions). In integrated balancing markets the orders and bids from all national procurement systems are anonymised. The operators of the balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to “orders” take place at a national level: the surveillance of orders is therefore governed by national means of effective market monitoring. Moreover, the cross-border surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return. BG: (Drafting): (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~~

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	~~that have potential delivery in the Union~~ **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**. Organised market places should be required to provide the full order book data set to the Agency. **The Market Participants should not be obliged to report to the Agency the orders and transaction reported by the Organised market places**. ~~Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.~~ BG: (Comments): It must be clarified which particular types of transactions with potential delivery in the Union are meant to be reported. The obligation of the OMPs to report the full order book, without lifting the obligations for the Market Participants to report both legs of the supply contract details will lead to obligation for **triple** reporting of the same data to ACER (by the OMP and the relevant MPs) and thus will invoke duplicate costs and fees for the involved parties.

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	There is no definition of **"*order book provider*"** and it is not clear whether and why the "*order book providers*" could fall into the scope of PPATs. PL: (Drafting): (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, upon request, 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. **Balancing platforms established under the Commission regulation (EU) 2017/2195 establishing a guideline on electricity balancing should be excluded from the above obligations, as in integrated balancing markets the orders and bids from all national procurement systems are anonymised.** PL:

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	(Comments): The obligation to report data on orders placed rests with the market participant, not with the organised market places. In order for the OMP to share with the Agency's order book, the Agency should call in advance for such data with an indication of the justification and reasons for receiving it not to put too much of an administrative burden and not to overly duplicate efforts already conducted by market participants. We propose to exclude balancing platforms. In integrated balancing markets the orders and bids from all national procurement systems are anonymised. The operators of the balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to "orders" take place at a national level: the surveillance of orders is therefore governed by national means of effective market monitoring. Moreover, the cross-border surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return. Changes proposed here are also reflected in art. 2 of the Regulation. HU: (Drafting): ~~Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.~~

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	HU: (Comments): We believe it will be ineffective to introduce order book providers as persons professionally arranging transactions (PPATs). In integrated balancing markets the orders and bids from all national procurement systems are anonymised. The operators of the balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to "orders" take place at a national level: the surveillance of orders is therefore governed by national means of effective market monitoring. Moreover, the cross-border surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return.
(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	

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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	DK: (Drafting): (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**

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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.**	**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**. IIPs shall be obliged to send all inside information to the ENTSO-E Transparency Platform. DK: (Comments): It is important for market participants to be able to find inside information. Today 13 IIPs are approved and 2 more are under evaluation. This means that the information potentially can be very hard to find. Ensuring disclosure on the centralised transparency platform will ensure that market participants only need to search in one place to find relevant and important information. BG: (Drafting): (11) Inside Information Platforms (IIPs) should play an important role for the effective ~~and timely publication~~ **disclosure** 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

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	in certain cases **of IIP incompliance with the authorization conditions**, 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. BG: (Comments): The timeliness of the publication depends on the Market Participants. The IIPs ensure simultaneous and effective public availability of the posted data. Agency could withdraw the authorisation of an IIP only in case of certaincases **of IIP incompliance** with the defined authorization conditions - not in other cases. PL: (Drafting): 11) Inside Information Platforms (IIPs) should play an important role for the effective ~~and timely~~ publication of inside information **without undue delay**. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure

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	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.** PL: (Comments): The market-critical timing of the public disclosure of inside information is the responsibility of the Market Participant, while the IIP should publish the message intended for disclosure without undue delay. IIPs are responsible for properly preparing the platform to enable the publication of inside information in accordance with the Agency's guidelines, not for the timing of the release of inside information to the public.
(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	BG: (Drafting): (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**,** as is already the case pursuant to Article 11 of Commission Implementing

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authorised by the Agency**, as is already the case pursuant to Article 11 of Commission Implementing Regulation (EU) No 1348/2014**. ~~*The*~~ RRMs**, 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 RRMs **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)**	Regulation (EU) No 1348/2014. RRMs, 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** a register of all RRMs **it has authorised**. **The Agency should have the power to withdraw such authorisation in certain cases of RRM incompliance with the authorization conditions,, 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.** BG: (Comments): **"At all times**" should be deleted from the requirement because it is not realistic. Eventual temporary technical issue at an RRM is not always time critiacl for the surveillance process. Considering that there are factors that may obstruct temporarily the RRMs to fully comply with the authorization requirements, at present, based on "ACER RRM Registration" document, the Agency asks the RRMs to **issue a contingency report and inform the Agency on the reason and measures taken by the RRM and the timeline for resolution of the problem causing the incompliance**. This practice is reasonable and should be preserved.

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2019/942. The withdrawal of an authorisation should not prevent an entity from applying for a new authorisation as RRM with the Agency.	PL: (Drafting): (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**, as is already the case pursuant to Article 11 of Commission Implementing Regulation (EU) No 1348/2014**. RRMs**, including those authorised by the Agency under that Implementing Regulation,** should **exercise all due diligence to** ~~at all times~~ comply **throughout** with the conditions for authorisation and **with** data protection law. The Agency should **maintain** ~~*also establish*~~ a register of all RRMs **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.** PL: (Comments): As technical issues or external factors may obstruct the RRM, even temporarily, maintenance of the authorization and data protection law can be ensured through compliance with continuous monitoring of the

Presidency compromise text	Drafting Suggestions Comments
	requirements for RRM.
(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.	BG: (Drafting): In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the **channels for** collection of inside information needs to be **technically** aligned with ~~the current processes~~ **those** for trade data reporting. BG: (Comments): It should be specifically clarified that only the "communication **channels**" for inside information data **collection** should be technically aligned with the **channels** for trade data **reporting**. It is important to distinguish the **processes of collection of the publicly available disclosed inside information**, and the **process for reporting** to **ACER of the commercially sensitive trade data.** The inside information, being published, is freely available for all stakeholders, including ACER. And the

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	process for provision of this data to ACER is an auxiliary one, that only facilitate Agency's work. In contrast, the trade data is available only to the Market Participants and/or the trading venues and for the monitoring purposes must be reported to ACER via dedicated secured channels. NL: (Drafting): (13) In order to facilitate monitoring to detect potential trading based on based on inside information, manipulation and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting. NL: (Comments): NL sees the risk that inside information/urgent market messages (UMM) can be misused for insiders trading and subject to market manipulation. For example, UMM's can be false (manipulated), ineffective or not in time. Hence, it would be good to cover manipulation in this recital. PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Drafting): 13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the **channels for** collection of inside information needs to be **technically** aligned with the current processes for trade data ~~reporting~~**monitoring**. PL: (Comments): Style editing: The main goal of this activity should be to provide proper tools for data collection and monitoring.
(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	IE: (Drafting): 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~~

Presidency compromise text	Drafting Suggestions Comments
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.	~~information. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions~~ IE: (Comments): Ireland proposes that market parties executing transactions in wholesale markets are not subject to surveillance of breaches. This would be a significant barrier for new entry of market parties into the electricity market and will stifle competition over time. BG: (Drafting): (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.~~ BG:

Presidency compromise text	Drafting Suggestions Comments
	(Comments): The notion into "*Persons professionally arranging and executing transactions*" is directly taken from MAR. The trade with financial and with purely energy products is different. It must be considered that the market Participants on the energy market execute transactions because they are acting on their own. The notion "execution" in the term *Persons professionally arranging and executing transactions*" is not appropriate for the energy market because it will turn every energy Market Participant into a person with surveillance with obligations under Article 15 of REMIT. The term "*Persons professionally arranging transactions*" from the current regulation should be preserved. **PPAT are NOT able to monitor the publication behaviour of their market participants.** Furthermore, if the goal is to align the terms in MAR and REMIT, it should be considered that the PPAETs on the financial market do not have obligation to monitor the disclosure of inside information. The proposal requiring the PPATs to monitor and report breaches related to the disclosure of inside information extends the scope of the PPATs' obligation to report breaches of the prohibitions for market manipulation and insider trading **beyond the scope of the corresponding obligation under MAR**. The PPATs cannot monitor, nor report potential breach of Article 4. PPAT are not able to monitor the disclosure of inside information of their members because the Market

Presidency compromise text	Drafting Suggestions Comments
	Participants should publish inside information on dedicated IIPs (not necessarily established and operated by the PPAT). The selection of the IIP is at sole discretion of the Market Participant and is out of the knowledge and control of the OMP/PPAT. PPATs could not oversee and control the market activities outside their venues. The provision of direct electronic access to 3rd parties (clients) does typically not represent arranging transactions and thus those entities cannot be classified as PPATs. NL: (Drafting): (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 on their own IIP platform. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions.

Presidency compromise text	Drafting Suggestions Comments
	NL: (Comments): It would be hard for PPAT's to monitor all inside information publications of their members on all IIPs. NL asks for clarification on the meaning of this obligation and suggests to add 'on their own IIP's. ES: (Drafting): (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 s~~Shared order-book providers should be considered as persons professionally arranging transactions. ES:

Presidency compromise text	Drafting Suggestions Comments
	(Comments): In the Spanish case, the majority of DEAP are representing small renewable producers. Hence, categorizing them as PPAETs could represent an administrative burden for them. However, configurations of DEAP indeed could be different. Therefore, it could be clarified that DEAP are not considered as PPAETs unless providing a service that is comparable to those who are professionally arranging transactions by bringing together buying and selling interest from different parties for the execution of WEPs. PL: (Drafting): Persons professionally arranging ~~and executing~~ transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation**, related to transactions executed on their market venues**. 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~~ **insider trading related to transactions executed on their market venues**. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions.

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	PL: (Comments): This obligation should be related only to breaches of Article 3 and art 5 for trades that are ordered and executed on the market venue operated by the relevant PPAT/OMP. PPAT could not investigate the obligations of market participants outside the system they monitor. According to the current wording of Article 15 of the REMIT Regulation, the PPAT is required to examine orders or transactions for breaches of Article 3, i.e. the prohibition of insider trading (using of inside information) and Article 5, i.e. the prohibition on manipulation. If, in examining a suspicious order or transaction, the PPAT finds that it there was a violation of the prohibition of insider trading (e.g., prior to the publication of inside information relating to the transaction), it has to examine the circumstances surrounding the publication of the inside information that was used. Only to that extent, i.e., in connection with the order or transaction under examining, can the PPAT also examine the publication of inside information. Therefore, there is no need to add a reference to Article 4 in the proposed provision in Article 15. It should also be emphasized that PPATs cannot be responsible for identifying breaches of obligations they cannot verify. Putting this obligations on PPATs will result in overlaps (e.g. the same publication is monitored several times over by multiple PPATs) and omissions (e.g. inside information published by a market participant that does not perform transactions on an organised market place – is active only on OTC market). Moreover, REMIT allows for a delay in the publication of inside information in certain circumstances, which must be communicated to ACER and the NRA. The assessment of compliance with the requirements in this respect can therefore only be performed by the NRA/ACER. Therefore, proposed regime is neither cost effective nor exhaustive. Since the amendment to the regulation provides for the obligation to report inside information to ACER on the same terms as data on transactions and orders and fundamental data, monitoring of compliance with the obligation to publish inside information should remain at the level of ACER and NRAs. “Executing” is a term from the financial regulation which in the case of REMIT would make all Market Participants PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not

Presidency compromise text	**Drafting Suggestions** **Comments**
	effective for REMIT. HU: (Drafting): (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~~. HU: (Comments): We propose to not make market parties executing transactions in wholesale markets subject to carry out surveillance of breaches. This would be a significant barrier for new entry of market parties in the electricity market and will stifle competition over time.
(15) Commission Regulation (EU)	

Presidency compromise text	Drafting Suggestions Comments
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	

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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	ES: (Drafting): The ~~ACER~~Agency price assessment should comprise the most complete dataset including transaction prices

Presidency compromise text	Drafting Suggestions Comments
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	

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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	LV: (Drafting): (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~~ **The Agency** should be able to delegate tasks and responsibilities to another national regulatory authority. **The national regulatory authorities should be able to ~~i~~introduc~~e~~~~ing~~** specific conditions and limit~~ing~~ the scope **of**~~for~~ the delegation to what is necessary for

Presidency compromise text	Drafting Suggestions Comments
authorities should be able to delegate tasks and responsibilities to another national regulatory authority. **The national regulatory authorities should be able to ~~I~~i**ntroduce~~ing~~ specific conditions and limit~~ing~~ the scope **of**~~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.	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. LV: (Comments): It should be noted that currently valid REMIT regulation stipulates that all involved national regulatory authorities have a duty to cooperate and provide necessary assistance to another national regulatory authority dealing with a REMIT breach. Therefore, delegation powers to the regulatory authority of another country would be grounds for implementing only in exceptional cases where, due to justified circumstances, there are difficulties in determining jurisdiction, to establish which national regulatory authority would be the most suitable for conducting the investigation of the relevant violation. This leads to the conclusion that in such cases a better solution would be to provide the Agency with the power to determine the responsible regulatory authority. Even more so, considering that such Agency's decision would be binding on all participating member states, it would not be necessary to separately agree on the delegation of certain powers, which means additional administrative burden as well as does not exclude the emergence of disagreements about the necessity of the specific scope of delegated powers. Also, this issue is discussed in recital 21 of the preamble.

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	BG: (Drafting): (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 **a defined set of** tasks and responsibilities to another national regulatory authority **provided that it does not entail unnecessary administrative burden for the market particiopants**. The national regulatory authorities should be able to **i**ntroduc**e** specific conditions and limit the scope **of** the delegation to what is necessary for the effective **cross-border** supervision ~~of cross-border market participants or groups~~. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter. BG: (Comments): The requirements for delegation from one NRA to another NRA need to be clearly specified and limited to case where the proposed re-enforced cooperation and coordination between NRAs is not sufficient. The supervision, enforcement and sanctioning of market participants for REMIT breaches should remain with

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	the competent NRA(s) as for these tasks the proposed re-enforced cooperation and coordination between NRAs is sufficient. ES: (Comments): Those competences granted to most NRAs under their respective national law, such us the enforcement, cannot be delegated to other NRA from a legal point view. That is the case for Spain, hence, there is no possibility for the Spanish NRA (CNMC) to delegate its tasks in other authority. However, we are not opposed to the inclusion of this recital and the article 16b, as we understand that the delegation is granted at the discretion of the NRAs, remaining as a possibility and not as an obligation.
(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**	BG: (Comments): Specify that the fundamental rights defined in the **Charter of Fundamental Rights of the European Union** are meant. NL:

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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.**	(Drafting): NL: (Comments): It seems that text in this recital was supplemented to justify the proposed harmonisation in art 18. In the view of NL, the argumentation is still not sufficient. The supplemented argumentation does not explain why sanctions need to be applied in uniform and consistent manner in all Member States and NL requests to further elaborate on the justification. The form and level of sanctions is up to the Member State to determine and depends on the structure of the overall sanction system in the Member State concerned. Under the current regulation, sanctions that are set by the Member State must already be effective, dissuasive, proportionate and reflect the nature, duration and seriousness of the violation, the harm to consumers and the profit that is potentially realized through inside information or market manipulation. Differences in sanctions between Member States are inherent to the fact that each Member State has a different legal system and sanction system. We also refer to our comments on article 18.

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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	BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.** The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package.

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jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.	The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4). **In case that the clauses of Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d are not deleted,** **we would like to propose some changes.**
(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	BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.** The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of

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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.	the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4). **In case that the clauses of Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d are not deleted,** **we would like to propose some changes.**
(21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union	LV: (Drafting): (21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out

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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	through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases **may** require**s** 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. BG: (Drafting): (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

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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.	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.~~ BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.** The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4).

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	In case that the clauses of Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d are not deleted, **we would like to propose some changes:** ***ACER should be only empowered to assist the NRAs in their investigations.*** ES: (Drafting): ~~(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~~

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	~~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.~~ ES: (Comments): See the comments provided on article 13.3
(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	DK: (Drafting): (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**

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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	**exercise of this latter power should be subject to a reasoned decision by the Agency and the prior authorisation by a judicial authority according to applicable national law.** 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**

Presidency compromise text	Drafting Suggestions Comments
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**	**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.** DK: (Comments): See little adjustment to secure consistency with proposed art. 13 a, sec. 9, and secure clarity of the legal base for the judicial review. BG: (Drafting): (22) The Agency should be empowered to carry out ~~any necessary~~ investigations by conducting on-site inspections, as well as by issuing requests for information ~~by simple request or~~ ~~by~~ **based on reasoned** decision, to the persons under investigations 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

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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*~~	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 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

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~~*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)**	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. BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.** The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4). **In case that the clauses of Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d are not deleted,**

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<u>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.</u>	**we would like to propose some changes** NL: (Drafting): […] 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 where possible, including where a person refuses to be subject to the inspection or to provide the requested information. […] **<u>The investigation report should be sent to the national regulatory authorities of the Member State(s) concerned, which should, ~~in turn~~ if it is convinced by the evidence that a breach has taken place, take all necessary enforcement measures, including the imposition of fines, according to national law and the provisions of this Regulation.</u>** **<u>[…]</u>**

Presidency compromise text	Drafting Suggestions Comments
	At the end of each investigation the Agency should issue an investigation report including its preliminary findings and all evidence, and the complete case file including all means of proof on which such findings have been based. NL: (Comments): NL requests to clarify what is meant by "full assistance" . NL sees a risk that NRAs do not always have all necessary powers and/or resources to assist ACER. Hence, NL suggests to add 'where possible'. Also, NL is of the opinion that an NRA has its own responsibility in ensuring that enforcement measures are justified. The NRA needs the case file including all documents, data etc. that provide incriminating and inculpatory evidence found by ACER to be able to decide on enforcement measures, provide for a fair procedure and if needed defend the case in court.

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	ES: (Drafting): ~~(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~~**

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	~~**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.**~~ ES: (Comments):

Presidency compromise text	Drafting Suggestions Comments
	See the comments provided on article 13.3 PL: (Drafting): (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**

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	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. The national regulatory authority is not obliged to accept conclusion of the legal assessment carried out by the Agency. The procedural guarantees and fundamental rights of the persons concerned shall be fully respected by the**

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	national regulatory authority according to applicable national law. PL: (Comments): The term "simple request" is not clear. Issuing requests for information by simple request would imply limitation of the procedural guarantees. Further comment on Art. 13 b. Conducting on-site inspection also by "other persons authorised by the Agency" is commented on art. 13a (3) below. The amendment aims to ensure legal clarity for market participants. The request for information must be considered as an act of direct and individual concern to the person concerned and as a challengeable act pursuant to Article 263 TFEU. Therefore it should take a form of an individual Agency decision, referred to in Article a point d Regulation 2019/942. In light of the limited scrutiny of the Court of Justice in relation to the complex economic and technical issues, such decision should also be subject to an appeal to Agency's Board of the Appeal. Article 18 only sets minimum standards for the rules on penalties applicable to infringements of the Regulation that should be lay down by Member States. However, because of the fact that ACER's conclusion that there was a breach of the Regulation will not take a form of formal decision, that could be reviewed by the Court of Justice, there is a need to ensure protection of procedural guaranties and fundamental rights of

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	the persons concerned. They should be able to comment on the fact, provide evidence or argumentation in their favour towards the national regulatory authority and national regulatory authority should be empowered to decide on the case based on all evidence and information (both gathered directly or received from ACER). Such decision should include assessment in relation to occurrence the breach and, if the regulatory authority is convinced that the breach took place, also measures and/or sanction referred to in Article 18 (2).
(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	

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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,	

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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] ~~*S**The sec***~~**P**~~p~~aragraph **2** is ~~*amended as follows*~~**replaced by the following**:	
“2. ~~**“***T***~~**T**his Regulation applies to trading in wholesale energy products.	NL:

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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**"**.	(Comments): Although there could be merit in the new formulation of article 1, NL requests a clarification in the text that substantiates why the scope under art 1(2) is adjusted. In any case, NL urges to prevent double administrative burden.
[b] In **paragraph 3** ~~*Article 1(3)*~~ the following second subparagraph is added:	
"The Agency, national regulatory authorities, ESMA and competent	LV:

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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**”**.	(Drafting): “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”. BG: (Drafting): “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**”**. ES: (Drafting): “The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member

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	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**"**. ES: (Comments): Introduction of 'in particular' implies the comparison to something larger. In the present case it is not clear what other exchanges have to be arranged. The mandatory condition of 'at least quarterly' is more appropriate for data exchange. Besides, it is not obvious to whom and under which conditions this obligation applies as far as the scope for implicated persons listed here remains large. PL: (Comments): It has to be highlighted that those new obligations imposed on NRAs, and other entities, could lead to a significant administrative burden.

Presidency compromise text	**Drafting Suggestions** **Comments**
[2] Article 2 is amended as follows:	
[a] point (1) is amended as follows:	
	ES: (Drafting): "(c) information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market~~**, in so far as this information is likely to have a significant effect on the prices of wholesale energy products**~~; and" ES: (Comments): The current definition of 'inside information' in first paragraph of Article 2(1) of REMIT states that "*'inside information' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public,* ***would be likely to significantly affect the prices*** *of those wholesale energy products.*" The same Article 2(1) gives examples of

Presidency compromise text	**Drafting Suggestions** **Comments**
	that is covered by the notion of information and only in point (c) there is a repetition of "*in so far as this information is likely to have a significant effect on the prices of wholesale energy products"* which is therefore redundant with the conditions laid down under Article 2(1), first paragraph aforementioned.
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";	BG: (Drafting): "(e) information conveyed by a ~~client~~ **third party** or by other persons acting on the ~~client's~~ **market participant's** behalf and relating to the ~~client's~~ **market participant's** pending orders in wholesale energy products, ~~which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products";~~ BG: (Comments): The text is taken directly from MAR and should be adjusted to correspond to the terms valid for the energy

Presidency compromise text	Drafting Suggestions Comments
	wholesale market. The last half of the sentence should be deleted because this condition (for precise nature) is already part of the definition for inside information. NL: (Drafting): "(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"; NL: (Comments): "Precise nature" is already covered in the first paragraph of point (1). ES: (Drafting): (e) for persons charged with the execution of orders concerning wholesale energy products, information

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	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. ES: (Comments): Specification added to make clearer that this provision is tackling front-running cases, that is to say cases where a professional is in possession of information on its client's orders/trading strategy, and could trade on this basis on its own behalf. PL: (Drafting): "(e) information conveyed by a ~~client~~ **market participant** 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"; PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): The term "client" is not used in REMIT.
[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	BG: (Drafting): "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.~~

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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.	BG: (Comments): **The concept for the "protracted process" will have negative implications on the process of the inside information disclosure. It will turn the evaluation and the decision for disclosure to a very complex process. The introduction of this concept increases the risks of unintentional incompliances of the market participants with the provisions of Article 4.** **Furthermore, it contradicts to the definition of "inside information" which must be "precise".** This concept may discourage the market participants from action on the EU energy market which could have negative implications on the liquidity. The idea for the "protracted process" and for disclosure of inside information for each step of a process occurring in stages was introduced several years ago by ACER in the non-binding ACER Guidance for REMIT implementation. The energy market had and have serious concerns regarding its application in practice because it makes the process of inside information disclosure even more difficult, involving more resources and requiring more complex analysis before the disclosure. For instance: When information is disclosed at a very early stage and is of a preliminary nature, it may mislead market participants, rather than contribute to efficient price formation and address the information asymmetry. In a

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	protracted process, given the different iterations information has still to go through, the information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the market participants should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise. The inside information disclosure process must be **straight thru because usually this disclosure is under emergency conditions.** The publication of inside information is done by technical/operational/dispatching personnel which needs clear and precise instructions to follow and cannot perform complex legal analysis whether an intermediate step of a long process could have influence on the wholesale energy prices. Instead of this concept, the **market needs clearly defined thresholds**, which will help the market participants easily to estimate/evaluate the significance of the effect from particular event on the wholesale energy market. This will in turn improve the energy market transparency and will reduce the risk of unintentional incompliance with the relevant provisions for inside information disclosure. Currently, the market participants have difficulties in applying the definition and requirements for inside information **due to the lack of clear and precise threshold on what information would be significant enough to influence the wholesale energy prices,** what kind of events (scope, level of severity, limitations

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	etc.) shall be disclosed and etc. To be "on the safe side" and avoid penalties for incompliance with the provisions for inside information disclosure, the majority of the market participants publish data about all occasions of capacity limitation. This floods the market with data that need to be further analysed and filtered before making use of it for the real trading process. **The process of inside information disclosure, which usually is invoked by an emergency, should be simplified, streamlined and based on clear and precise pillars that should ensure the timeliness, value, usability and quality of the disclosed data.** PL: (Drafting): "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~~

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	~~relates to the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances~~ ~~or that future event.~~ PL: (Comments): We propose to amend this paragraph. Evaluating and qualifying a specific fact/event as 'inside information' under REMIT is a very responsible and often difficult process. Introducing to that assessment the "protracted process" will make this even more difficult. At the same time, it will cause that the published information about intermediate steps will be frequently updated and changed. As a consequence, this may lead to accusations from other market participant of misleading, i.e. one of the types of manipulation. The concept of the "protracted process" will therefore have negative implications on completeness and the timeliness of the inside information disclosure because it will make the evaluation and the decision for disclosure very complex. It will also be difficult to ensure the information is of precise nature.
An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the	BG: (Drafting):

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criteria of inside information as referred to in **point 1***~~this Article~~*.	~~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~~* BG: (Comments): **The concept for the "protracted process" will have negative implications on the process of the inside information disclosure. It will turn the evaluation and the decision for disclosure to a very complex process. The introduction of this concept increases the risks of unintentional incompliances of the market participants with the provisions of Article 4.** **Furthermore, it contradicts to the definition of "inside information" which must be "precise".** This concept may discourage the market participants from action on the EU energy market which could have negative implications on the liquidity. The idea for the "protracted process" and for disclosure of inside information for each step of a process occurring in stages was introduced several years ago by ACER in the non-binding ACER Guidance for REMIT implementation. The energy market had and have serious concerns regarding its application in practice because it makes the process of inside information disclosure even more difficult, involving more resources and requiring more complex analysis before the disclosure. For instance:

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	When information is disclosed at a very early stage and is of a preliminary nature, it may mislead market participants, rather than contribute to efficient price formation and address the information asymmetry. In a protracted process, given the different iterations information has still to go through, the information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the market participants should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise. The inside information disclosure process must be **straight thru because usually this disclosure is under emergency conditions.** The publication of inside information is done by technical/operational/dispatching personnel which needs clear and precise instructions to follow and cannot perform complex legal analysis whether an intermediate step of a long process could have influence on the wholesale energy prices. Instead of this concept, the **market needs clearly defined thresholds**, which will help the market participants easily to estimate/evaluate the significance of the effect from particular event on the wholesale energy market. This will in turn improve the energy market transparency and will reduce the risk of unintentional incompliance with the relevant provisions for inside information disclosure. Currently, the market participants have difficulties in applying the definition and requirements for inside

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	information **due to the lack of clear and precise threshold on what information would be significant enough to influence the wholesale energy prices,** what kind of events (scope, level of severity, limitations etc.) shall be disclosed and etc. To be "on the safe side" and avoid penalties for incompliance with the provisions for inside information disclosure, the majority of the market participants publish data about all occasions of capacity limitation. This floods the market with data that need to be further analysed and filtered before making use of it for the real trading process. **The process of inside information disclosure, which usually is invoked by an emergency, should be simplified, streamlined and based on clear and precise pillars that should ensure the timeliness, value, usability and quality of the disclosed data.** PL: (Drafting): ~~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*~~. PL:

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	(Comments): We propose to delete this fragment -the explenation presented above.
For the purposes of p**oint (1)**~~*aragraph 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)*~~**”**;	
	BG: (Drafting):

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	ACER shall define, in close cooperation with National Regulatory Authorities, thresholds for the identification of events which, if they were made public, would likely to significantly affect the prices of those wholesale energy products; BG: (Comments): The **market needs clearly defined thresholds**, which will help the market participants easily to estimate/evaluate the significance of the effect from particular event on the wholesale energy market. This will in turn improve the energy market transparency and will reduce the risk of unintentional incompliance with the relevant provisions for inside information disclosure. Currently, the market participants have difficulties in applying the definition and requirements for inside information **due to the lack of clear and precise threshold on what information would be significant enough to influence the wholesale energy prices,** what kind of events (scope, level of severity, limitations etc.) shall be disclosed and etc. To be "on the safe side" and avoid penalties for incompliance with the provisions for inside information disclosure, the majority of the market participants publish data about all occasions of capacity limitation. This floods the market with data that need to be further analysed and filtered before making use of it for the real trading process. **The process of inside information disclosure, which usually is invoked by an emergency, should be**

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	simplified, streamlined and based on clear and precise pillars that should ensure the timeliness, value, usability and quality of the disclosed data.
[c] **point** ~~*aragraph* (2), *point*~~ (a) is replaced by the following:	
~~*(2) 'market manipulation' means:*~~	NL: (Comments): NL appreciates new wording that better aligns REMIT with MAR. However, the examples of market manipulation behaviour equivalent to art. 12(2) and 12(3) and Annex I of MAR are missing and would be useful in addition. This could also be done by a reference to MAR.
(a) entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products which:	

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(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;	NL: (Drafting): (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 abnormal or 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 NL: (Comments): Addition to align with art. 12(1)(a)(ii) MAR.

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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;	NL: (Drafting): Replace with: entering into a transaction, placing an order to trade or any other activity or behaviour which affects or is likely to affect the price of one or several wholesale energy products, which employs a fictitious device or any other form of deception or contrivance; Without prejudice to the forms of behaviour set out in this paragraph, Annex I of Regulation (EU) no 596/2014 defines non-exhaustive indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing. NL: (Comments): NL proposes this text to further align wording with art. 12(1)(b) MAR.

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or**"**	
[d] in p**oint**~~*aragraph*~~ (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.”;	

Presidency compromise text	**Drafting Suggestions** **Comments**
[e] at the end of p**oint**~~*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.";	ES: (Drafting): 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 p**oint**~~*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:*~~	

Presidency compromise text	**Drafting Suggestions** **Comments**
(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**;"; "	NL: (Comments): NL is of the view that the new text provides more clarity.
	ES: (Drafting): **In paragraph (4), after point (d), the following points (e) and (f) are added:** **(e) contracts relating to the storage of electricity or natural gas in the Union;** **(f) derivatives relating to the storage of electricity or natural gas in the Union;** ES:

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	(Comments): The current definition of 'wholesale energy products' includes only two types of contracts which are related specifically to "supply" and "transportation". It would be necessary to add a third type of wholesale energy product for "storage", both for completeness' sake and also considering the role that storage will play in the short run, also in light of the Commission Recommendation of 14 March 2023 on Energy Storage – Underpinning a decarbonised and secure EU energy system. Contracts for storage has become increasingly important and to ensure these contracts and/or derivatives are traded in a fare and transparent way they should be added to the definition of 'wholesale energy products'.
[g] **point**~~*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	NL: (Comments): NL supports the deletion of PPAT's in this point. ES:

Presidency compromise text	**Drafting Suggestions** **Comments**
or more wholesale energy markets”;	(Drafting): (7) ‘market participant’ means any person, including transmission system operators, distribution system operators, storage system operators, LNG system operators and LNG market participants, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets; ”; ES: (Comments): Clarification of who is considered as a market participant
[h] the following new p**oint**~~*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	IE: (Drafting): “(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;”;

Presidency compromise text	Drafting Suggestions Comments
in, wholesale energy products;”;	IE: (Comments): Ireland proposes that market parties executing transactions in wholesale markets are not subject to surveillance of breaches. This would be a significant barrier for new entry of market parties into the electricity market and will stifle competition over time. BG: (Drafting): “(8a) 'person professionally arranging ~~or executing~~ transactions' means a person professionally engaged in the reception and transmission of orders for, ~~or in the execution~~ **arrangement** of transactions in, wholesale energy products;”; BG: (Comments): **The notion into “*Persons professionally arranging and executing transactions*” is directly taken from MAR. The trade with financial and with purely energy products is different. It must be considered that the Market Participants on the energy market execute transactions because they are acting on their own.**

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	The notion "execution" in the term "*Persons professionally arranging and executing transactions*" is not appropriate for the energy market because it will turn every energy Market Participant into a person with surveillance with obligations under Article 15 of REMIT. **The term "*Persons professionally arranging transactions*" from the current regulation should be preserved.** NL: (Comments): From this text , it is not clear whether the definition of PPATs is intended to cover OMPs. NL would like to see clarified if OMPs are covered in this definition. It can be argued that OMPs would fall in scope of this definition. Because the definition of market participant is also proposed to be changed to include PPATs, including OMPs within the definition of PPATs means that OMPs would also qualify as market participants and would have to meet related requirements under REMIT. When the assumption is granted that OMPs are included, NL would like to caution against any risk of double, potentially conflicting requirements and roles for OMPs.

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	PL: (Drafting): "(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, excluding balancing platforms established under the Commission regulation (EU) 2017/2195 establishing a guideline on electricity balancing;"; PL: (Comments): "Executing" is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. We propose the exclusion of balancing platforms. In integrated balancing markets the orders and bids from all national procurement systems are anonymised. The operators of the balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to "orders" take place at a national level: the surveillance of orders is therefore governed by national means of effective market monitoring. Moreover, the cross-border

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	surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return. HU: (Drafting): "(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 p**oint**~~*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:	

Presidency compromise text	Drafting Suggestions Comments
"(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;	BG: (Drafting): "(16) 'registered reporting mechanism' or 'RRM' means a person authorised under this Regulation to ~~provide the service of reporting~~ **report** details of transactions, including orders to trade, ~~and~~ **or** fundamental data to the Agency on behalf of **themselves or on behalf of third party** market participants; Or **'registered reporting mechanism' means an entity registered by the Agency in accordance with Article 11 of Implementing Regulation (EU) No 1348/2014 for the purpose of reporting transaction records or fundamental data;.** BG: (Comments): More than 60% of the RRMs are Market Participants which are reporting their own data. This is not a "provision of service of reporting" but reporting on its own. All possible cases shall be covered by the Regulation and its revision should not exlude the possibility for the individual MPs to operate as RRMs and

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	report theiw own data. That's why *"~~provide the service of reporting~~"* should be replaced by ***"report".*** Also, the RRMs must be able to choose which type of data to report. An RRM should not be obliged to report all types of reportable data – both trade data and fundamental data. For instance, ENTSOG is obliged to report data to ACER based on Article 9(1) of REMIT Implementing Regulation. The data that ENTSOG can report is ONLY fundamental data. ENTSOG does not posses trade data and should not be obliged to report trade data. That's why the following rewording is required: "*details of transactions, including orders to trade, ~~and~~ **or** fundamental data"* Commission decision (EU) 2020/2152 on the REMIT fees due to ACER, Article 2(1) contains definition for the term **"RRM***: 'registered reporting mechanism' means an entity registered by the Agency in accordance with Article 11 of Implementing Regulation (EU) No 1348/2014 for the purpose of reporting transaction records or fundamental data;***.** Both definitions of the term "RRM" should be aligned.

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	PL: (Drafting): "(16) 'registered reporting mechanism' or 'RRM' means a person ~~registered~~**authorised** under this Regulation to ~~provide the service of~~ report~~ing~~ details of transactions, including orders to trade, and/or fundamental data to the Agency on its own behalf or on behalf of market participants; PL: (Comments): Currently, there are also RRMs that submit data to ACER on their own behalf only. The proposed definition does not take into account such cases. There is also different scope of reported data – e.g. there are RRMs who report only fundamental data or all types of data. Moreover, this definition is contrary to Art. 4a point 4.
(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	BG: (Drafting): (17) 'inside information platform' or 'IIP' means a person authorised under this Regulation to provide the service of operating a platform for the disclosure of inside information and for ~~the reporting~~ **submission** of

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of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants~~.~~**;**	**the** disclosed inside information to the Agency on **its** behalf **as a market participant and/or on behalf of other** market participants; BG: (Comments): **The inside information data collection by ACER is NOT reporting.** **The term "repoting" should be used only for the collection of commercially sensitive trade data via secured channels.** The IIPs are meant to facilitate the access of the markert players, ACER and the NRAs to the disclosed inside information by providing centralized locations for data publication. The data made public on IIPs is freely available and accessible to the stakeholders, including – market participants, ACER and the NRAs. **The inside information provision, via special channel to ACER is an auxiliary process** – facilitating ACER ex-post monitoring and surveillance activities. The submission of the published inside information to ACER should **not be considered as "reporting"** because the notion "reporting" in the context of REMIT is associated with ***submission of commercially sensitive data via a secured channel to ACER.***

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	The inside information data submission by the IIPs to ACER (under Article 4) shall be clearly distinguished from the "data reporting" of commercially sensitive transaction details from the RRMs to ACER (under Article 8). The MPs should not be limited to operate and should be allowed to establish and register IIP where they could disclose their own inside information and/or offer services to third party MPs for publication and provision of inside information to ACER. PL: (Drafting): (17) 'inside information platform' or 'IIP' means a person ~~registered~~**authorised** under this Regulation to ~~provide the service of operating~~**operate** a platform for the disclosure of inside information and for the ~~reporting~~**submission** of disclosed inside information to the Agency on behalf of market participants~~.~~**;** PL: (Comments):

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	The IIPs should be allowed to submit their data to ACER directly. IIPs submit information to the Agency on behalf of market participants who are required to disclose it in accordance with Article 4 (1).
(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	

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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,	

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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,*~~	BG: (Drafting): (20) 'organised market place' ('OMP') means ~~an energy exchange, an energy broker, an energy capacity platform or any other~~ **a multilateral** 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 Or alternatively: **'organised market place' means:** **(a) a multilateral system, which brings together or facilitates the bringing together of multiple third**

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~~*including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account*~~.	**party buying and selling interests in wholesale energy products in a way that results in a contract,** **(b) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract. These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council.** BG: (Comments): It is not clear why a new definition for OMP is needed, since **there is such in Article 2(4) of Regulation (EU) 1348/2014**. The proposed new definition does not clearly state that the OMP facilitate the process of **bringing together of multiple third party buying and selling interests**. The proposed new definition is not aligned with the definition for "OMP" of Article 2(4) of Regulation (EU) 1348/2014: ***'organised market place' or 'organised market' means: (a) a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract,*** ***(b) any other system or facility in which multiple third-party buying and selling interests in wholesale***

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	energy products are able to interact in a way that results in a contract. These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council. **We would suggest to replaced the proposed new definition with the one of Article 2(4) of Regulation (EU) 1348/2014.** It shall be taken into account that the "capacity platforms" are not OMPs in all cases. For instance, the gas capacity platforms could be considered OMPs only for the secondary gas capacity allocation trasactions. ES: (Drafting): (20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy capacity allocation 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*~~.

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	ES: (Comments): It is important to ensure that the definition covers coupled markets such as NEMO shared order book providers and balancing energy platforms. PL: (Drafting): (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~~, excluding balancing platforms established under the Commission regulation (EU) 2017/2195 establishing a guideline on electricity balancing ~~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~~. PL:

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	(Comments): Due to the obligations imposed on OMP, including monitoring and reporting violations as PPAT, we propose to exclude balancing platforms with justification: In integrated balancing markets the orders and bids from all national procurement systems are anonymised. The operators of the balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to "orders" take place at a national level: the surveillance of orders is therefore governed by national means of effective market monitoring. Moreover, the cross-border surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return.
(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.	BG: (Drafting): 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.~~ BG:

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	(Comments): What is meant by "life cycle events"? Are those events related to the orders or to the concluded transaction? In the current terminology used by ACER in the ACER REMIT documentation, the notion "life cycle event" refers to the life cycle of a contract (modification, cancelling) which happens out of the OMP.
(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.	ES: (Drafting): (21) 'LNG trading' means **entering into any transaction, issuing any order to trade or taking any other action relating to** ~~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. ES: (Comments): The LNG provisions from Council Regulation (EU) 2022/2576 have to be adapted in order to make them

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	more future proof and suitable for a permanent inclusion in the European legal framework on energy. There is a need for further flexibility in the provisions, which will make it possible to improve and adapt the price assessment methodology, determination of the benchmark and underlying data requirements in the future, in case it is required, but also to adapt the frequency and form of publication. This comment also applies to the following articles 2.22 and 2.24.
(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*~~.	ES: (Drafting): (**22**) 'LNG market data' means records of ~~bids, offers or~~ transactions, **orders, or any other actions relating to the purchase or sale of** ~~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	

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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*~~.	ES: (Drafting): (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.'';	ES: (Drafting): ~~(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.'';~~ **(26) 'benchmark' means any rate, index or figure, made available to the public or published that is periodically or regularly determined by the application of a formula to, or on the basis of the value of**

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	one or more underlying wholesale energy products, including estimated prices, or surveys, and by reference to which the amount payable under a wholesale energy product or the value of a wholesale energy product is determined ES: (Comments): By Article 1[2][d] of Comission proposal a new provision is introduced in Article 2 of REMIT. Point (c) added in paragraph 2 make reference to a 'benchmark' which notion was not defined in REMIT. It is suggested to align this notion to those used in MAR (REGULATION (EU) No 596/2014).
[3] in Article 3(1) the following second subparagraph is added:	NL: (Comments): NL considers it of value to harmonise article 3 further with MAR, for example by including a notion on "legitimate behaviour", as stated in article 9 MAR.
"The use of inside information by cancelling or amending an order	NL:

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concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading."; [4] Article 4 is amended as follows: [a] in paragraph 1 the following 2nd subparagraph is added:	(Drafting): "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. In relation to auctions, the use of inside information shall also comprise submitting, modifying or withdrawing a bid by a person for its own account or for the account of a third party. "; NL: (Comments): Addition for better alignment with Art. 9(1) MAR, last sentence. In MAR auctions are about emission allowances, but in trading of electricity and transmission capacity auctions are also common practice.
[4] Article 4 is amended as follows:	
[a] in paragraph 1 the following 2nd 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 **prompt**~~*fast*~~ access, including access through a clear application programming interface and complete, correct and timely assessment of the information by the public."; [redacted]	BG: (Drafting): "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 access~~, including access through a clear application programming interface and complete, correct and timely assessment of the information~~ by the public."; BG: (Comments): **Please consider the following information which might be too technical but is very important:** **The obligations of the IIPs suggested by the document:** - **To be available and operable "at all times" – 100% of the time;** - **To provide Application Programming Interface (API) for all stakeholders;** - **To provide access to the published data to all stakeholders – including via API – free of charge;** - **To provide publication services to the MPs "as a reasobable cost"** **are incompatible and impossible for simultaneous fulfilment.**

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	It is not possible for a system to offer API calls without subscription and limitations to all potential stakeholders, and at the same time these simultaneous API calls to the platform to not affect its performance and availability. **Tens, hundreds or thousands simultaneous API calls can easily destroy the platform performance and make it unavailable which contradicts to its main purpose – to allow MPs at any time to publish data and this time to be available to the whole market.** **This could be organized but the required resources would be extremely expensive and the IIP srevices in such case could not be offered neither for free, nor at a "reasonable" price.** **The specification of the communication channel is a very technical detail and should be kept out of REMIT regulation.** **It should be specified in the ACER documentation or in Implementing Regulation dedicated on the requirements towards the IIPs.** **We disagree with the proposals to impose on IIP operators obligations to assess and be responsible to Market Participants data quality and that the IIPs shall be supplemented by application programming interface.** Regarding the expression that the IIPs shall ensure:

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	"and complete, correct and timely assessment of the information by the public", it should be considered that the IIP operator **does not and cannot control the quality of the assessment by the stakeholders of the disclosed data.** Regarding the requirement that the IIPs should provide ***"application programming interface" (API)*** for access to the data, please consider that: **1.** In whereas (13) above, it is envisages alignement between the collection of inside information and the reporting of trade data. In the reporting of trade data, API **is not used** and thus, the requirement for provision of API by the IIPs is a misalignment with recital (13). **2**.The IIPs will merge huge volume of data. The API (application programming interface) interface could be a possible solution for access to data but not without limitations. One or several huge, simultaneous API calls to the published data could seriously affect the IIP availability and performance. This could hinder the possibility for timely disclosure of inside information and the timely access to it by the interested stakeholders, which contradicts to the requirement for high availability of the IIPs. If the API would be mandatory as communication interface for pulling data form the IIPs, it would be technically unavoidable to provide the API without limitations - restrictions of the data volume that could be obtained. This in turn will reduce the efficiency of the presence of the API.

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	The availability and the performance of the platform, the possibility for the MPs to publish data is more important that the possibility to pull it via API and this is the reason why we would like to suggest to not impose this solution for access to the published data as mandatory. If API would be the preferred solution for access to the data on IIPs, a limitation of the exported volumes (throttling) should be envisaged and/or allowed in order to guarantee the technical availability of the platforms. 3. The used expression "***clear application programming interface***" is inappropriate. "**Clear**" cannot be used as characteristic of a technical means/communication channel. 4. The topic on communication interfaces provided by the IIPs like ***"application programming interface" (API)*** - is very technical and would be more appropriate to be covered by implementing regulation or ACER technical documentation PL: (Drafting):

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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 **prompt**~~fast~~ access~~, including access through a clear application programming interface and complete, correct and timely assessment of the information~~ by the public."; **Market participants shall disclose the inside information according to thresholds included in Regulation (EC) No 543/2013, (EC) No 943/2019 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations. National regulatory authorities can adopt in their public available guidance lower thresholds if it is justified by size of the national market in a given Member State.**"; PL: (Comments): IIPs do not have access to the market participant's inside information and also they have no influence behind the timing of the recipient's evaluation and interpretation of the UMM message. The responsibility for data quality must be with the owner of the data, the Market Participants. We additionaly propose to introduce a certain volume threshold in MW from which there would be an obligation to publish inside information by market participants (similar to the minimum threshold of 100

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	MW,established in Commission Regulation (EU) No. 543/2013 of June 14, 2013 on the supply and publishing data on electricity markets, amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council or as a percentage of the total installed capacity of sources generating electricity in a given European Union Member State), but with a minimum threshold of 100 MW. This would harmonize the publication process across MS.
[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	BG: (Drafting): The publication of inside information, including in aggregated form, in accordance with Regulation ~~(EC)~~ ~~No 714/2009~~ **(EU) No 543/2013** or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes**,** **simultaneous, complete and effective public disclosure but not in all cases disclosure in a timely manner in the meaning of paragraph 1 of this Article**.~~*complete and*~~ effective**,** ~~public disclosure but not *necessarily*~~ **necessarily timely, public** disclosure ~~*in a timely manner in*~~ **within** ~~the~~

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~~*necessarily*~~ **necessarily timely, public** disclosure ~~*in a timely manner*~~ ~~*in*~~ **within** the meaning of paragraph 1 of this Article".	~~meaning of paragraph 1 of this Article".~~ BG: (Comments): Please consider that the so called "Transparency regulations/guidelines" (Regulation (EU) No 543/2013 or (EC) No 715/2009 and the network codes) require publication of defined set of information **on European Transparency Platforms** which constitutes **simultaneous, complete and effective public disclosure** of the data required to be published by those regulations: ***simultaneous -*** *available simultaneously for all stakeholders;* ***complete -*** *according to those regulations;* ***effective -*** *the data is available and accessible via single location/platform for all stakeholders (which is not the case with the inside information and the mutitude of IIPs that could be authorized by ACER;* ***public disclosure -*** *the data is publicly available via the Transparency platform, free of charge and without subscription for all stakeholders. If the data publication on Transparency Platform cannot be considered "public" then what is the purpose of the Transparency Regulation?* The only inconsistency with the REMIT requirements for disclosure of inside information could appear with

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	regards to the **timeliness** of the interruptions data publication. The current text of the requirements of Article 4(4) is: *"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* ***simultaneous, complete and effective public disclosure****."* The fulfilment of the transparency requirements of Regulation (Regulation (EU) No 543/2013 or (EC) No 715/2009, guidelines and network codes constitutes *complete, effective* and also ***simultaneous*** (simultaneously publicly available data for all stakeholders) public disclosure. PL: (Drafting): **"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**~~ and **timely, public** disclosure provided it is made in a timely manner ~~*in a timely manner*~~ ~~*in*~~ **within** the meaning of paragraph 1 of this Article".

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	PL: (Comments): While the proposal is correct, in order to omit the imprecise word "necessarily" it is proposed to change the wording.
	DK: (Drafting): [c] a new paragraph 8 is added: “8. All IIP’s shall send all inside information to ENTSO-E and ENTSO-G Transparency Platform, in accordance with (EU) Regulation No 543/2013, on which it shall also be published once received.” DK: (Comments): We suggest that all inside information publications are re-published on the ENTSO-E and ENTSO-G Transparency platform to ensure that this crucial market information can be found on the central transparency platform.

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	With this proposal, the liability lies with the IIP while the information will be accessible centrally so it is easy for Market Participants to become aware of the information.
[5] The following Article 4a is inserted:	
"Article 4a	
Authorisation and supervision of IIPs	PL: (Comments): General remark: the very strict and far-reaching requirements for IIP platforms will make insider services on these platforms very expensive. Some of them may withdraw from this activity.
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~~	

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~~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 a**n 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.*~~	
	PL: (Drafting):

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	IIPs that have been registered as Registered Information Services in accordance with Article 11 of the REMIT Implementing Acts and included in ACER list of IIPs at the date of entry into force of this Regulation shall be treated as compliant with the requirements in paragraphs 2 to 4 and authorised as IIPs providing they fulffill those requirements. PL: (Comments): There is no need to repeat the autorisation procedure for IPPs that have been already registered as Registered Infromation services in accordance with Article 11 of REMIT Implementing Act.
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**	BG: (Drafting): 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~~**. **However, IIPs may optionally provide access to the published data via application programming interface, provided that this access will not affect the availability and the performance of the platform**

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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.	**and the possibility of the Market Participants to publish data. In such cases the access to the application programming interface can be offered on a reasonable commercial basis**. 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 , **defined by ACER**, that facilitates the consolidation of the inside information with similar data from other ~~sources~~ **IIPs**. BG: (Comments): **Please consider the following information which might be too technical but is very important:** **The obligations of the IIPs suggested by the document:** - **To be available and operable "at all times" – 100% of the time;** - **To provide Application Programming Interface (API) for all stakeholders;** - **To provide access to the published data to all stakeholders – including via API – free of charge;** - **To provide publication services to the MPs "as a reasobable cost"** **are incompatible and impossible for simultaneous fulfilment.** **It is not possible for a system to offer API calls without subscription and limitations to all potential stakeholders, and at the same time these simultaneous API calls to the platform to not affect its**

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	performance and availability. **Tens, hundreds or thousands simultaneous API calls can easily destroy the platform performance and make it unavailable which contradicts to its main purpose – to allow MPs at any time to publish data and this time to be available to the whole market.** **This could be organized but the required resources would be extremely expensive and the IIP srevices in such case could not be offered neither for free, nor at a "reasonable" price.** **The specification of the communication channel is a very technical detail and should be kept out of REMIT regulation.** **The current specification of the channels for data reporting or inside information data collection are done in the ACER documentation and in REMIT Implementing Regulation.** We **strongly disagree** to be obligatory for the IIPs to provide: ***"application programming interface" (API)*** *and t provide it "ree of charge.* In this context, please take into account: **1.** In whereas (13) above, it is envisages alignement between the collection of inside information and the reporting of trade data. In the reporting of trade data, API **is not used** and thus, the requirement for provision of API by the IIPs is a misalignment with recital (13). **2**.The IIPs will merge huge volume of data. The API (application programming interface) interface could be a

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	possible solution for access to data but not without technical limitations. One or several huge, simultaneous API calls to the published data could seriously affect the IIP availability and performance. This could hinder the possibility for timely disclosure of inside information and the timely access to it by the interested stakeholders, which contradicts to the requirement for high availability of the IIPs. If the API would be mandatory as communication interface for pulling data form the IIPs, it would be technically unavoidable to provide the API without limitations - restrictions of the data volume that could be obtained. This in turn will reduce the efficiency of the presence of the API. The availability and the performance of the platform, the possibility for the MPs to publish data is more important that the possibility to pull it via API and this is the reason why we would like to suggest to not impose this solution for access to the published data as mandatory. If API would be the preferred solution for access to the data on IIPs, a limitation of the exported volumes (throttling) should be envisaged and/or allowed in order to guarantee the technical availability of the platforms. 3**. It is required that the IIPs are operated *"on a reasonable commercial basis*" and the inside information to be made available to all stakeholders free of charge.**

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	If an API interface must be provided without limitations for every single IIP user, this will require enormous resources and expences to maintain such platform. Furthermore, the IIPs should have close to 100% availability/uptime. The fulfilment of such requirements would be extermely expensive and hard to be achieved, and bring high potential to discourage the solution providers from offering IIP services. This, as a consiquence could have negative effect on the aimed higher market transparency. The communiction channels, protocols and standards are technical questions that must be consulted with the relevant stakeholders and could be specified in implementing acts and/or ACER technical documentation. PL: (Drafting): 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 IIPs ~~other sources~~.

Presidency compromise text	Drafting Suggestions Comments
	PL: (Comments): Once disclosed, inside information ceases to be inside information, it is merely information, and aligned to the fact that IIPs are the only official sources for inside information disclosure. Mandatory data for inside information disclosure: The current proposal is not aligned with the reality for publishing data. Event stop must be left optional for Other Market Information to properly reflect the nature of this type of information. The responsibility for good data quality must be with the owner of the data, i.e. the Market Participants. The IIPs cannot be liable for their MPs data. The IIPs are providing a service for Market Participants to fulfil their REMIT obligations. This is a crucial rule that must be maintained in all aspects of reporting, including in case an IIP's authorization is withdrawn. The manner in which inside information is collected is a technical matter which should be defined in the Implementing Acts (EC) 1348/2014. HU: (Drafting): The information shall be made available **and accessible** for all purposes free of charge**, except for**

Presidency compromise text	Drafting Suggestions Comments
	commercial purposes, including access through an application programming interface which shall be made available at the latest within one year after entry into force of this amended Regulation. HU: (Comments): This point does not explain exactly what is meant by "all purpose". Making this information free for any use is not very fortunate wording. It would be more appropriate to exclude commercial purposes from these (except for commercial purposes), because otherwise this information can literally be used for anything. In relation to the previous comment, building an application programming interface (API) takes time. IIPs are already in operation in some countries, there shall be some lead-time provided to build up the API.
	BG: (Drafting): **IIPs that have been authorised as Registered Information Services in accordance with Article 11 of Regulation (EU) No 1348/2014 and included in ACER list of IIPs at the date of entry into force of this Regulation shall be treated as compliant and registered as IIPs.**

Presidency compromise text	Drafting Suggestions Comments
	BG: (Comments): The registration requirement towards the IIPs shall not trigger any disruption of the compliance of market participants with the disclosure obligation. Therefore, The currently registered by ACER IIPs in accordance with ACER Guidance and Article 11 of Regulation (EU) No 1348/2014, which are included in ACER IIP list shall be treated as compliant and registered as IIPs, and should not be obliged to pass a new re-authorization process.
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:	BG: (Drafting): ~~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:~~ BG: (Comments): The details listed below are very technical and would be more appropriate for ACER REMIT documentation

Presidency compromise text	Drafting Suggestions Comments
	or Implementing Acts. Furthermore, the formats for disclosure of inside information **are defined** by ACER in ACER Manual of Procedure (ACER MOP) (issued based on Article 10(3) of Implementing Regulation (EU) 1348/2024) **in 2016**. At present they are already widely used by the Market Participants and implemented in the ACER system and all IIPs' platforms. ES: (Drafting): ~~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:~~ ES: (Comments): The listed details refer too much to (unplanned) outages and include too few other categories of information. The list is not exhaustive enough and applies especially to information published by TSO according to transparency regulations on the ENTSO-E and ENTSO-G transparency platforms (e.g. relating e.g. to forecasts/ actual uses of generation, of transmission capacity, of balancing energy, foreseen offered/ allocated/ capacities in auctions, etc.).

Presidency compromise text	**Drafting Suggestions** **Comments**
	The details of the information made public by an IIP should be provided by an implementing act of the amended REMIT regulation, which is easier to adapt than the first level regulation.
(a) the message ID and event status;	ES: (Drafting): ~~(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;	BG: (Drafting): the date and time of the publication, and of ~~the~~ the beginning and the end of the event, **where possible.** BG: (Comments): At the moment of the initial disclosure of inside information, the end time of the event is not always known, i.e - in case of a serious outage – the precise end time of the repairment works cannot be estimated.

Presidency compromise text	Drafting Suggestions Comments
	We would recommend to be precised that the "end time" of an event could be announced **"where possible".** ES: (Drafting): ~~(b) **the date and time of** the publication date, **and of** *the time and* the **beginning***start* and **the end***stop* of the event;~~ PL: (Drafting): (b) **the date and time of** the publication ~~date~~, **and of** ~~the time and~~ the **beginning**~~start~~ and if applicable **the end**~~stop~~ of the event; PL: (Comments): Not for every event (e.g. outage) can the date and time be indicated with first publication. Mandatory data on inside information disclosure: the current provision does not allow for factual disclosure of an event when the date of stopping the event is not known (e.g., outages).

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(c) the market participant name and the market participant identification;	ES: (Drafting): ~~(c) the market participant name and the market participant identification;~~
(d) the type of information (e.g., unavailability, forecast, actual use)	BG: (Drafting): **~~(d) the type of information (e.g., unavailability, forecast, actual use)~~** BG: (Comments): The formats for disclosure of inside information are defined by ACER in ACER Manual of Procedure (ACER MOP) (issued based on Article 10(3) of Implementing Regulation (EU) 1348/2024) in 2016. In accordance with ACER specification from ACER MOP, inside information shall be disclosed via Urgent Market Messages (UMMs). Three types of UMMs are defined – for gas unavailability, electricity unavailability and other market information.

Presidency compromise text	Drafting Suggestions Comments
	These formats are already applied by ACER, by the European energy market participanst (around 15 000 entities) and integrated in the systems of the registered by ACER around 20 IIPs. The defined in ACER MOP UMM **formats do not include the suggested new attribute "type of information".** The suggested details (unavailability, forecast, actual use) are covered by the other UMM attrubutes (**Event type, Type of unavailability, etc**.) and will lead to unclarities on and duplication in the published details. **We disagree with the inclusion of this new element because it will not bring any value for the market.** ES: (Drafting): ~~**(d) the type of information (e.g., unavailability, forecast, actual use)**~~
(~~*d*~~**e**) the bidding or balancing zone concerned; **and**	ES: (Drafting): ~~(*d*~~**e**~~) the bidding or balancing zone concerned; **and**~~

Presidency compromise text	**Drafting Suggestions** **Comments**
(**ef**) ~~*and,*~~ where applicable:	ES: (Drafting): ~~(**ef**) *and,* where applicable:~~
~~(*a*)~~**(i)**the type of unavailability and the type of event;	ES: (Drafting): ~~(*a*)~~**(i)**~~the type of unavailability and the type of event;~~
~~(*b*)~~**(ii)**the unit of measurement;	ES: (Drafting): ~~(*b*)~~**(ii)**~~the unit of measurement;~~
~~(*c*)~~**(iii)**the unavailable, the available and the installed or technical capacity;	ES:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Drafting): ~~*(c)***~~**(iii)**~~the unavailable, the available and the installed or technical capacity;~~
~~*(d)*~~**(iv)**the reason for the unavailability;	ES: (Drafting): ~~*(d)*~~**(iv)**~~the reason for the unavailability;~~
~~*(e)*~~**(v)**the fuel type;	ES: (Drafting): ~~*(e)*~~**(v)**~~the fuel type;~~
~~*(f)*~~**(iv)**the affected asset or unit and its identification code.	ES: (Drafting): ~~*(f)*~~**(iv)**~~the affected asset or unit and its identification code.~~

Presidency compromise text	**Drafting Suggestions** **Comments**
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**n 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.	PL: (Drafting): 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~~**~~n OMP~~** ~~market operator or market participant~~ an **IIP** shall treat all ~~inside~~ information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions, **if any**. PL: (Comments): The published information is not inside information anymore.The current formulation narrows the fulfilment of additional roles to market participant and OMP. However, an IIP operator can also perform the role of, for example, RRMs or PPATs.
An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of	BG: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
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.	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~~ **solutions** in place in order to offer and maintain its services ~~at all times~~ **with mimimum occasions and durations of unavailability.** BG: (Comments): The Regulation should not set unrealistic requirements for availability *"at all times"* that cannot be technically fulfilled, (there is no system with 100% uptime), especially considering the provision of Article 4a(2) that the IIP services shall be offered **at *"reasonable commercial basis"***. Furthermore, the oblgations for disclosure of inside information lay at the market participants and it should be their obligation in case of eventual unavailability of an IIP to post the inside information on another platform. PL: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
	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~~**solutions** in place in order to offer and maintain**, with minimum occasions and durations of unavailability,** its services ~~at all times~~ **on a reasonable commercial basis** PL: (Comments): Most electronic systems require inaccessibility due to e.g. maintenance activities, security protocols, etc. The Regulation should not set unrealistic requirements for availability "at all times" that cannot be technically fulfilled, (there is no system with 100% uptime), especially considering the provision of Article 4a(2) that the IIP services shall be offered at "reasonable commercial basis". It is MPs' responsibility to publish inside information in accordance with the regulation. The operator of the suspended IIP might have obligations to complete all pending (at the moment of withdrawal of authorization) data submissions to ACER and to provide to the MPs with possibility to obtain in format allowing quantitative analysis the complete set of published data for the last 5 years (currently, in accordance with ACER Guidance for REMIT implementation, the IIPs are obliged to keep the published inside information for a period of 5 years).

Presidency compromise text	Drafting Suggestions Comments
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.	BG: (Drafting): The IIP, **together with the market participants,** shall **enable a mechanism** ~~have systems in place~~ that can quickly and effectively check inside information ~~reports~~ **data set provided by the market participoant** for completeness~~, identify omissions and obvious errors~~ **and format validity of the elements**, and ~~request to receive a corrected version of such~~ **indicate any errors to the issuing market participant, who in tern shall resubmit the corrected data to the IIP for publication.** BG: (Comments): The use of the term “report” in the context of the IIP, inside information publication or inside information collection is inappropriate. The IIPs’ systems could only check and indicate technical issues with the provided content regarding missing mandatory data and wrong/invalid data format. The check for completeness and omission is one and the same process (if a data set is complete – there are no omissions).

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	However, the eventual resubmission of the erronous data is at MP's discretion and subject to MP's decision, which could not and should not be included in the obligation of the IIPs. PL: (Drafting): The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness **as applicable**, identify omissions and obvious errors, and request **to receive a corrected version of such** ~~re-transmission of any such erroneous~~ reports. PL: (Comments): IIP provides technical validation of the information provided, but the responsibility for the completeness of the information rests with the Market Participant
5. The Agency may withdraw the **authorisation**~~*registration*~~ of an IIP	

Presidency compromise text	Drafting Suggestions Comments
by means of a decision and remove it from the register where the **IIP**~~*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;	BG: (Drafting): ~~does not make use of the authorisation within 12 months, or~~ has ~~provided~~ **offered** no services for the preceding ~~six~~ **12** months; BG: (Comments): It is not clear what is the difference between *"does not make use of the authorization"* and *"provided no services"*. *"Does not make use of the authorization*" is not a clear term. An IIP could not have sufficient number of publishing MP clients, or those MPs may not suffer from events that are subject to inside information disclosure. This is out of the control and responsibility of an IIP. Its services might be available to the MPs

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	during the time and it should be considered that the absence of a real market-based occasion for disclosure of inside information would not be treated as *"not made use of authorization"*. If an IIP is dedicated for inside information disclosures by gas TSOs, it shall be considered that usually during the winter (late autumn, winter, early spring) period there are no planned maintenance events. If there are no outages, it could happen that there would be no occasions for inside information disclosure on the IIP for the winter (late autumn, winter, early spring) period which may last 6 or more 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	

Presidency compromise text	Drafting Suggestions Comments
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.	
	PL: (Drafting): **In such a decision the Agency shall also 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.** PL: (Comments): We propose to add this paragraph to ensure there is an appropriate appeal procedure. Alternatively it could be

Presidency compromise text	Drafting Suggestions Comments
	considered to amend the Regulation 2019/942 (article 2d)
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**	BG: (Drafting): When the Agency has withdrawn an authorisation, the IIP concerned shall ensure **completion of the initiated reportings to ACER and provision to each market participant of its own full set of published data during the previous 5 years from the date of withdrwal, in an electronic format allowing quantitative analysis.** ~~orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.~~

Presidency compromise text	Drafting Suggestions Comments
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.	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,~~ ~~**but not less than three months**~~ ~~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.~~ BG: (Comments): It is MPs' responsibility to publish inside information in accordance with the Regulation. The operator of the suspended IIP might have obligations to complete all pending (at the moment of withdrawal of authorization) data submissions **to ACER** and to provide to the MPs the data – historically published on the IIP during the previous 5 years (in format allowing quantitative analysis). The inside information flow is as follows: MP->IIP -> ACER. The published on an IIP inside information is obtained and used by the stakeholders at the time of its publication and validity. The published on an IIP inside information is submitted to ACER within the same day of data publication and there **is no sense this historically published and submitted to ACER data to be redircted to another IIP.**

Presidency compromise text	Drafting Suggestions Comments
	The only meaningful exercise, in case of IIP authorrization withdrwal would be: - Completion of the initiated data submissions from the IIP to ACER; - Provision of the historically published data to the relevant Market Participants, that might have obligations under some national regulations to store such data for a period of time (maximum 5 years) and to provide it to the relevant NRA upon request. Currently, in accordance with ACER Guidance for REMIT implementation, the IIPs are obliged to keep the published inside information for a period of 5 years). However, the operator of the suspended IIP is not in a position and could not arrange the relations (technical, contractual) between its MP-clients and the other IIPs, and to transfer MPs' data to another IIP that is not chosen by the affected MPs. PL: (Drafting): -7. When the **Agency**~~registration~~ has ~~been~~ withdrawn **an authorisation**, the IIP concerned-shall inform all concerned Market Participants about decision issued by the Agency, in order to allow the concerned Market

Presidency compromise text	Drafting Suggestions Comments
	Participants to make the needed arrangements with other IIP(s). ~~ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs~~, The IIP may, upon the request of Market Participant, transfer the data published on the platform and redirect reporting flows to another IIP.**To ensure continuity, the Agency shall give the IIP a reasonable time period of at least six months for ~~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.** PL: (Comments): We do not see the need for mandatory transfer of already published UMMs to another IIP under the above circumstances. The obligation to publish UMM messages and select an IIP rests with the market participant. The market participant may request the IIP to transfer archived UMM message publications to another IIP designated by it.
The Agency shall, without undue delay, notify the national competent authority in the Member State where	BG: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
the IIP is established**, and inform market participants** of **the**~~a~~ decision to withdraw the **authorisation**~~*registration*~~ of an IIP.	The Agency shall, without undue delay, notify the national **regulatory** ~~competent~~ authority in the Member State where the IIP is established**,** ~~**and inform market participants**~~ of **the** decision to withdraw the **authorisation** of an IIP, **and shall ensure that all market participants associated to the concerned IIP are informed of the decision not later than six months before the entry into force of its decision.** BG: (Comments): ACER must inform the Market Participants that are publishing data on the concerned IIP at least six months in advance, before the entry into force of the withdrawal decision, in order to allow them to make the needed technical, organizational and contractual arrangements with other IIP(s). **The market participants must be aware of this as they are the first interested parties to know that an IIP is no longer active.**
	BG: (Drafting): Proposal for a new provision

Presidency compromise text	Drafting Suggestions Comments
	The IIP whose authorization was withdrawn cannot be prevented to re-initiate the IIP registration with ACER after rectification of the reason for the ceased authorization. BG: (Comments): Proposal for a new provision
8~~6~~. **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:*~~	BG: (Drafting): By [two years after entry into force of the amending regulation], **after public consultations**, the Commission shall adopt implementing acts specifying: BG: (Comments): The technical and organizational requirements towards the IIPs shall be properly consulted with the market (potential IIP operators, market participants – publishers, traders and network users – potential users of the disclosed inside information).

Presidency compromise text	**Drafting Suggestions** **Comments**
	PL: (Drafting): **8~~6~~. By [two years after entry into force of the amending regulation]**, the Commission shall, after public consultation, **adopt implementing acts specifying:** ~~*shall, by means of implementing acts, specify:*~~ PL: (Comments): The Commission should always consult with stakeholders on implementing acts as these documents largely determine interpretations of the regulation's provisions and significantly support stakeholders' reporting, publishing or monitoring obligations. Many times they contribute to organizational and financial costs for market participants, RRMs, PPATs or IIPs.
(a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;	

Presidency compromise text	**Drafting Suggestions** **Comments**
(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;	BG: (Drafting): (b) the content **and the relevant details** of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article; BG: (Comments): The relevant details that were listed in paragraph 3 and were deleted, should be included here to make sure the implementing regulation provides better guidance to the market participants.
(c) the concrete organisational requirements for the implementation of paragraph 4**;**~~.~~	BG: (Drafting): (c) the concrete organisational requirements for the implementation of paragraph 4 **and 5;**~~.~~ BG: (Comments):

Presidency compromise text	Drafting Suggestions Comments
	The implementing act should cover also the details concerning the process of withdrawing an authorisation, of orderly substitution and of informing market participants.
(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;	PL: (Drafting): **<u>(e) the details concerning the process of ~~orderly~~ substitution referred to in paragraph 7;</u>** PL: (Comments): We propose to amend this fragment as the Market Participants should be the ones mostly concerned with the transfer od their data to another IIP and based on provided information decide whether to trasnfer the data

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	themselves or request IIP to do it on their behalf. As such it should not be an automatic process in which IIPs are soelly decided when, how and to whom transfer the data published on their platform.
(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).	BG: (Drafting): **After a public consultation with the market participants has been conducted,** those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).
	PL: (Comments):

Presidency compromise text	**Drafting Suggestions** **Comments**
[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	HU: (Drafting): 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. Organised market places concerned shall be entitled to recover costs related to testing activities for algorithmic trading. HU: (Comments): During the course of ensuring compliance with REMIT, various tasks may arise on the part of the market

Presidency compromise text	Drafting Suggestions Comments
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.	operators, for example, providing a test system to check the adequacy of algorithmic trading. During these tasks, extra costs are incurred on the side of the market operators (e.g. extra test systems or extra RRM fee), in connection with which reimbursement is not currently provided, as there is no provision for this in the law. In view of this, we recommend that the possibility of reimbursing costs incurred during the performance of REMIT-related tasks be enshrined in legislation.
2. A market participant that	PL:

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engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of ~~*its*~~ **the** Member State **where it is registered pursuant to Article 9(1)** and to the Agency.	(Comments): It has to be highlighted that those new obligations imposed on NRAs, and other entities, could lead to a significant administrative burden.
The national regulatory authority of the Member State **where**~~*of*~~ 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	

Presidency compromise text	Drafting Suggestions Comments
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.	NL: (Comments): NL welcomes the inclusion of a fixed period.
3. A market participant that provides direct electronic access to an organised market place shall notify the ~~competent~~ **national regulatory**	

Presidency compromise text	**Drafting Suggestions** **Comments**
authority~~*ies*~~ 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	

Presidency compromise text	**Drafting Suggestions** **Comments**
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.”;	
	HU: (Drafting): 5. This article does not apply to transmission system operators.; HU: (Comments): TSOs use automation of their processes (e.g. activation of balancing energy) to fulfil their obligations. It is impractical and inefficient to place obligations on TSOs regarding algorithmic trading as these areas are

Presidency compromise text	**Drafting Suggestions** **Comments**
	controlled under other legislation (e.g. Regulation 2017/2195).
[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	

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	ES: (Drafting): 1. ~~*As a matter of urgency,*~~ **The Agency**~~*ACER*~~ shall produce and publish a ~~daily~~ LNG price assessment **and a LNG benchmark** ~~*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. ES: (Comments): There is a need for further flexibility in the provisions, which will make it possible to improve and adapt the price assessment methodology, determination of the benchmark and underlying data requirements in the future, in case it is required, but also to adapt the frequency and form of publication.

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	It is also proposed to include the detailed rules for the LNG price assessment, benchmark and related data reporting, either in the Implementing Regulation (EU) No 1348/2014 or in the guidance documents ACER are tasked with issuing pursuant to Article 7c in the Commission proposal to amendments to Regulation (EU) No 1227/2011. Especially, for transaction reporting specifications of currencies and units are better defined in the transaction reporting guidance documents than in the regulation itself.
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	ES: (Drafting): ~~2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.~~

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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.	ES: (Drafting): ~~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~~.
	ES: (Drafting): **4. For the purposes of producing and publishing the ~~daily~~ LNG price assessment and benchmark, the Agency may make use of the services of a third party.**

COMMENTS FROM: LV CZ IE DK IT BG NL ES LT PL HU

Presidency compromise text	**Drafting Suggestions** **Comments**
Article 7b	
Publication of LNG price assessments and benchmark	ES: (Drafting): ~~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.	ES: (Drafting): ~~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.~~

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2. For the purposes of this Article, **the Agency**~~*ACER*~~ may make use of the services of a third party.	ES: (Drafting): ~~2. For the purposes of this Article, ACER may make use of the services of a third party.~~
Article 7c	ES: (Drafting): ~~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*	ES: (Drafting): 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*~~,

Presidency compromise text	**Drafting Suggestions** **Comments**
~~*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).	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 2**1(2)**~~9~~.	ES: (Drafting): 2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted **to the Agency and the publication timing and frequency of the LNG price assessment and benchmark** ~~before the daily publication of the LNG price assessment~~ as referred to in **Article 7a**~~paragraph 1~~. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article **21(2)**~~9~~.

Presidency compromise text	**Drafting Suggestions** **Comments**
3. Where appropriate, **the Agency**~~*ACER*~~ shall, after consulting the Commission, issue guidance on:	PL: (Drafting): 3. Where appropriate, **the Agency**~~*ACER*~~ shall, after consulting the Commission and **public consultation**, issue guidance on: PL: (Comments): The agency should always consult with stakeholders on guidelines and recommendations, as these documents largely determine interpretations of the regulation's provisions and significantly support stakeholders' reporting, publishing or monitoring obligations. Many times they contribute to organizational and financial costs for market participants, RRMs, PPATs or IIPs.
(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing	

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	BG: (Drafting): 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. BG:

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	(Comments): **If included within the REMIT regulation, the LNG data collection should not be free of charge because the collection, processing, analysing, storing of this data costs money. It shall be ensured that the relevant ACER expences shall be covered either by the general ACER budget or by fees for the reporting LNG marker participants, but in no case will be covered by increase reporting fees for the rest of the market participants, RRMs and IIPs.**
Article 7d	ES: (Comments): This article should remain in the Implementing Regulation (EU) No 1348/2014.
LNG market data quality	
1. LNG market data shall include:	

Presidency compromise text	Drafting Suggestions Comments
(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;	

Presidency compromise text	Drafting Suggestions Comments
(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:	

Presidency compromise text	Drafting Suggestions Comments
(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	

Presidency compromise text	Drafting Suggestions Comments
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	

Presidency compromise text	Drafting Suggestions Comments
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~~ed~~	
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	

Presidency compromise text	**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*~~ **OMPs, or third parties on their behalf,** shall**:**	PL: (Drafting): “(1a) For the purpose of reporting records of transactions, including orders to trade, entered, **modified, canceled**, concluded or executed at organised market places, those ~~*market places*~~ **OMPs, or third parties on their behalf,** shall upon Agency’s request**:** PL: (Comments):

Presidency compromise text	Drafting Suggestions Comments
	There is a need to clarify the catalogue of situations which generate market places' obligation to share specific data with the Agency. There's a need to clarify that OMP should only share the data or order book based on Agency's request. This provision should not put to much of an administrative burden on OMPs. As Agency already collects data from Market Participants it should be stressed that such request should be based on the lack of information not to duplicate the efforts made by both MPs and OMPs.
- make available to the Agency data relating to the order book or,	BG: (Drafting): make available to the Agency data relating to the order book **to which they have access** ~~or,~~ **fulfilling on behalf of market participants their obligations in accordance with paragraph 1**. BG: (Comments): The amendment provides clarity and aims at avoiding to double the amount of data that must be reported. The proposed modifications make sure that order book are shared in any case in order to allow that the Agency performs the supervision correctly, but removing the double reporting from individual market

Presidency compromise text	Drafting Suggestions Comments
	participants. At the same time, bilateral contracts should continue to be reported in accordance with Article 8, paragraph 1.
- upon the Agency's request, give the Agency access to the order book so that **the Agency**~~*it*~~ is able to monitor trading **on the wholesale energy market**.	BG: (Drafting): ~~- upon the Agency's request, give the Agency access to the order book so that **the Agency**~~*~~it~~* ~~is able to monitor trading **on the wholesale energy market**~~. PL: (Drafting): - ~~upon the Agency's request~~, give the Agency access to the order book so that **the Agency**~~*it*~~ is able to monitor trading **on the wholesale energy market**.
	HU: (Drafting): **NEMOs concerned shall be entitled to recover costs in accordance with the Commission Regulation**

Presidency compromise text	Drafting Suggestions Comments
	(EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management. HU: (Comments): We believe that NEMOs would be entitled to recover the costs while operating single day-ahead and intraday coupling: providing the order book can be considered as an activity for operating the market coupling. In order to avoid any misinterpretation, the possibility of reimbursing costs incurred during the performance of REMIT-related tasks should be set out either in REMIT or even in CACM.
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.	PL: (Comments): The deadline for adopting of implementing acts should be given similarly to the implementation acts for RRM and IIP detailed arrangements. HU: (Drafting): ~~**The Commission shall adopt implementing acts specifying the further details regarding the operation**~~

Presidency compromise text	Drafting Suggestions Comments
	~~**of this paragraph, including the specific arrangements for ensuring effective data reporting.**~~ HU: (Comments): We propose to delete. this addition as there is an ACER decision regarding this OBK provision already: DECISION No 01/2022 Since it is already ruled through an ACER decision (which legal basis is more than questionable, only this modification introduce the legal basis), there is no need for an additional legislative act, which brings more inflexiability to the system, may cause additional costs for the market players. Basesd on the past ecxperience ACER and NEMOs can negotiate effectively how to ensure the effective data reporting. If this become an act, maybe the NEMOs point of view would not be taken into account properly.
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). ~~”;~~	BG: (Drafting): **After a public consultation with the market participants has been conducted,** those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).

Presidency compromise text	**Drafting Suggestions** **Comments**
	PL: (Drafting): ~~**Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).**~~ PL: (Comments): This part of the provision is redundant becouse it is repeated below. HU: (Drafting): ~~**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:	

Presidency compromise text	**Drafting Suggestions** **Comments**
"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."	BG: (Drafting): **After a public consultation with the market participants has been conducted,** 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	

Presidency compromise text	**Drafting Suggestions** **Comments**
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**”**;	BG: (Drafting): **“**(d) an organised market place, a trade-matching system or other person professionally arranging ~~or executing~~ transactions**”**; BG: (Comments):

Presidency compromise text	Drafting Suggestions Comments
	Please refer to the argumentation provided for the proposals in: - Whereas (14); Article 1(8a) PL: (Drafting): **"**(d) an organised market place, a trade-matching system or other person professionally arranging ~~or~~ ~~executing~~ transactions**"**; PL: (Comments): Executing" is a term from the financial regulation which in the case of REMIT would make all Market Participants PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. HU: (Drafting):

Presidency compromise text	**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 **the Agency**~~*ACER*~~ and national regulatory authorities with information related to the capacity and use of facilities for production,	BG: (Drafting): "5. Market participants shall provide the Agency and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity

Presidency compromise text	Drafting Suggestions Comments
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.”;	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.”; BG: (Comments): The disclosure by publication of inside information is made and meant for the use of the market. **The market players: market participants, traders, network users are the main target for the published inside information**. **The inside information provision, via special channel to ACER is an auxiliary process** – facilitating ACER ex-post monitoring and surveillance activities. ACER collects the disclosed inside information in order to detect eventual occasions of breaches of Article 3 of Regulation (EU) No 1227/2011. The disclosed inside information is publicly available and its monitoring could be done without special data collection. This means that the submission to ACER of the published inside information is done to facilitate the work of ACER and the NRAs. The collection of the published inside information by ACER and the NRAs should not be considered as

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	"reporting" and should not be included explicitly in the scope of Article 8. The provision of the published inside information to ACER should **not be included in the REMIT Fee regime** (when the inside information collection is put in the scope of Article 8 of REMIT, it automatically falls within the Fee regime – Article 32 (2) of ACER Regulation). The provisions set in Article 4 and Article 4a for inside information disclosure, for inside information publication on IIPs and for inside information submission by the IIPs to ACER are sufficient and ensure and cover all aspects of requirements for efficient and timely inside information disclosure for its main target – the market, and submission for monitoring purposes - to ACER. PL: (Drafting): "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

Presidency compromise text	**Drafting Suggestions** **Comments**
	sources where possible."; PL: (Comments): Market Participants are required to publish inside information and not report it to ACER. The disclosure by publication of inside information is made and meant for the use of the market. The disclosed inside information is publicly available and its monitoring could be done without special data collection.
[9] in Article 9 **(1)**, **the first sub-paragraph ~~in~~** ~~*paragraph 1*~~ is replaced by the following:	PL: (Drafting): [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	LV:

Presidency compromise text	Drafting Suggestions Comments
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.”;	(Drafting): “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~~ **one of the** Member State**s** in which they are active and register with the national regulatory authority of that Member State.”; LV: (Comments): It is unclear what happens in case if market participants are active in several Member States. BG: (Drafting): “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~~

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	~~State.";~~ **or, if they are not established or resident in the Union, in a Member State in which they are active.** BG: (Comments): This requirement will impose obligation to the parties from third countries to establish and "declare an office" in every Member State in which they are active or intend to become active. This potential issue was tackled by the current text of Article 9(1) which requires from the entities from third country to register with only one NRA. **The proposed revision will increase the administrative burden on the parties from third countries and might have negative effect on the liquidity, competetiveness and the security of supply in the EU wholesale energy market.** We would suggest to preserve the definition from the current Article 9(1) of REMIT and delete the proposed requirement to 'establish an office' in the EU. It is not clear what "declare an office" would mean – it may vary from a simple declaration of an address to the establishment of a business entity, and our concern is that all possible interpretations will create market barriers for third country firms without adding value to market integrity objectives.

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	NL: (Drafting): 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. If they are not established or resident in the Union, in a Member State in which they are active Market participants resident or established in a third country shall **ensure that they have a representative** ~~declare an office ,~~ in a Member State in which they are active and register with the national regulatory authority of that Member State using a valid national Value Added identification number.”. Member States shall ensure that the name, address, electronic mail address and telephone number of the representative is notified to a supervisory authority in the Member State where the representative is domiciled or established.” NL: (Comments):

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	NL is in favour of adequate and future-proof supervision of energy markets and third country participants. NL however warns against introducing trade barriers, such as office requirements, as they could create a significant barrier third country market participants that are needed for our security of supply and that want to be active in European markets. Therefore, NL has serious concerns about the lack of clarity of this addition to the text, particularly on the EU security of supply, liquidity on EU energy markets, specifically in light of the current energy crisis. For introducing such barriers NL believes it is of utmost important to provide – at the minimum – an explanation of the problem that is being tried to solve, what the justification is for intervention, what options for intervention are available, what such intervention exactly entails at the practical level and what the impact of such intervention is security of supply. NL currently cannot agree with the proposed text and is firmly opposed against a full office requirement for market participants from third countries. In the alternative, NL proposes to consider a strengthening of the supervision while considering the concerns regarding impact on liquidity and security of supply by proposing below additions and clarifications: - Require participants to register using a valid VAT number. Currently, some participants do not to fill in valid codes while registering if these companies do not have a code (VAT, BIC, LEI), as this is not

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	obligatory. In the current situation, the risk exists that participants fill in artificial codes and subsequently get an ACER code which is required to trade. As the VAT is the only required field works well for verification (acer decision 2012-01), NL proposes to require a valid VAT for registration. This would increase transparency regarding third country participants. - Requiring third country market participants to install a representative in the EU. This would increase supervision, while is proposes a lower barrier than an office. Example: representatives already act on behalf of third-country manufacturers - for example of medicines - who want to sell their products in the EU. See, for example, section 3.2. of the document (PbEU 2016, C 272): COMMISSION NOTICE The 'Blue Guide' on the implementation of EU products rules 2016. ES: (Drafting): "1. Market participants entering into transactions which are required to be reported to ~~ACER~~the Agency 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."; [illegible]

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	PL: (Drafting): "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."; If the market participant residing or established in the third country is active in several Member States, it may choose in which Member State it will declare the office and with which regulatory authority it will register. "; PL: (Comments): This change will probably result in an increase of entities subjected to register in the national register of market participants (CEREMP). The provision should also indicate which MS should market participant from a third country choose to register its office if it operates in several EU countries or it should be clarified whether the intention is for market participant to declare an office in every member state they are active. For example, in Poland, entrepreneurs from the Swiss Confederation, EFTA countries and Turkey may, on the

Presidency compromise text	Drafting Suggestions Comments
	basis of separate regulations or agreements, conduct licensed activities specified in the Energy Law, directly, without establishing a branch in Poland.
	BG: (Drafting): Proposal for amendment of Article 9 (3): National regulatory authorities shall transmit the information in their national registers to the Agency in a format determined by the Agency. The Agency shall, in cooperation with those authorities, determine that format and shall publish it by 29 June 2012. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency ~~may decide to~~ **shall** make the European register~~, or extracts thereof,~~ publicly available provided that **personal data and** commercially sensitive information on individual market participants is not disclosed. BG: (Comments): Argumentation for the proposed amendment

Presidency compromise text	Drafting Suggestions Comments
	This is a proposal for revision of Article 9 (3) aiming to increase the market transparency. At present, only an extract of the European Register of the Energy Market Participants (CEREMP) is made public. Details like the **VAT number** of the companies are **not** made public regardless of the stakeholders' feedback during the ACER public consultations on the CEREMP, organized in 2016 and the stakeholders' requests to ACER. From the RRMs, OMPs, TSOs is expected to report high quality data to ACER which includes the identity of the Market Participants, taking part in the reported transactions. The disclosure of more CEREMP details, including the VAT of the Market Participants will turn CEREMP into a useful reference for the market and will have positive effect on the market transparency and the reported data quality. The possibility to verify MPs' VATs via CEREMP will guarantee consistency between the data in the contracts between the parties on the energy market and the reported data to ACER. Furthermore, the new provisions of REMIT, envisage that *"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"*. The VAT number of the market participants is an important indicator and reference regarding the company registration and it would be useful also for the new bodies that will be involved in the REMIT data exchange

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	(competent financial market authorities, national competition authorities, national tax authorities and EUROFISC*)* to get it in the public part of CEREMP. The personal data and commercially sensitive information on individual market participants and their employees and representatives in CEREMP should not be made public.
[10] the following Article 9a is inserted:	NL: (Comments): NL asks the Commission to substantiate the necessity of this establishment requirement. An establishment requirement could disincentivise RRMs, that are established outside the EU, to provide services in the EU. The latter could have a negative impact on the EU-based customers of those third country RRMs.
"Article 9a	
Authorisation and supervision of the Registered Reporting Mechanisms	
1. The operation of an RRM shall be subject to prior authorisation by the	

Presidency compromise text	**Drafting Suggestions** **Comments**
Agency ~~*in accordance with this Article*~~.	
	BG: (Drafting): **RRMs that have been authorised in accordance with Article 11 of Regulation (EU) No 1348/2014 and included in ACER list of RRMs at the date of entry into force of this Regulation shall be treated as compliant and registered as RRMs.** BG: (Comments): This is a proposal for an additional paragraph that is arranging the status of the currently registered RRMs, in accordance with Article 11 of Regulation (EU) No 1348/2014.
The Agency shall authorise parties as RRM where:	
(a) the RRM is a legal person	

Presidency compromise text	Drafting Suggestions Comments
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	BG: (Drafting): An authorised RRM shall comply ~~at all times~~ with the conditions for authorisation referred to in paragraphs 1 and 3. An authorised RRM shall, without undue delay, notify ACER of any material changes to the

Presidency compromise text	Drafting Suggestions Comments
delay, notify ACER of any material changes to the conditions for authorisation.	conditions for authorisation. BG: (Comments): Technical issues or external factors may obstruct the RRM, even temporarily, to fully comply, "at all times", with the conditions for authorisation. Considering this, at present, ACER asks the RRMs to issue a contingency report and inform the Agency on the reason and measures taken by the RRM to resolve the problem causing the incompliance. ES: (Drafting): An authorised RRM shall comply at all times with the conditions for authorisation referred to in **paragraphs 1 and 3**. An authorised RRM shall, without undue delay, notify the Agency~~ACER~~ of any material changes to the conditions for authorisation. PL: (Drafting):

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	An authorised RRM shall **endeavour to** 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. PL: (Comments): As technical issues or external factors may obstruct the RRM, even temporarily, maintenance of the authorization be ensured through compliance with continuous monitoring of the requirements for RRM.
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	

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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 RRMs with **paragraphs 1 and 3**~~*this Regulation*~~. For this purpose, RRMs shall report on an annual basis about their activities to the Agency.	BG: (Drafting): The Agency shall ~~regularly~~ **not be prevented from** ~~review~~ **reviewing** the compliance of RRMs paragraphs 1 and 3. For this purpose, **upon written request issued by ACER, specifying the scope and the format of the requested information, an** ~~RRMs~~ **RRM** shall report ~~on an annual basis~~ about ~~their~~ **its reporting** activities to the Agency. BG: (Comments):

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	The automatic administrative burden for the RRMs should be avoided or reduced. The "regular reviews" will invoke additional unnecessary burden, costs and resources both for ACER and the RRMs. With the supervision power over the RRMs ACER could always request additional details from the RRMs. The current ACER requirements towards the RRMs allow ACER to request each of the RRMs to provide report about its reporting activities. NL: (Drafting): The Agency shall regularly review the compliance of RRMs … **and shall inform all NRAs on the results of this review.** For this purpose, RRMs shall report on an annual basis about their activities to the Agency. **These reports will be shared with the relevant NRAs.** NL: (Comments): NL considers it important that NRAs are also up to date on the status of relevant RRMs.

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	PL: (Drafting): 2. The Agency shall ~~regularly review~~ **not be prevented from reviewing** the compliance of RRMs with **paragraphs 1 and 3**~~this Regulation~~. For this purpose, RRMs shall**, upon written request issued by ACER, specifying the scope and the format of the requested information,** report ~~on an annual basis~~ about their activities to the Agency. PL: (Comments): RRMs should receive specific guidance on the report they are to submit to the Agency. The scope of information that ACER wishes to receive from RRM should be clearly defined. It seems that it is enough for the ACER to make a request when it considers that there is a need, rather than making RRM an annual obligation. HU: (Drafting): ~~For this purpose, RRMs shall report on an annual basis about their activities to the Agency.~~

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	HU: (Comments): At this point, the RRM is already a validated, accepted entity that fulfills the reporting function. In addition, a regular reporting obligation is just an extra burden for the RRM, which is not justified by ACER. We therefore recommend deleting the referenced sentence.
3. RRMs shall have adequate policies and arrangements in place to **ensure the prompt** report**ing 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*~~.	

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RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.	PL: (Drafting): RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM ~~that is also an~~ ~~OMP or market participant~~ shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions, **if any** PL: (Comments): To maintain effective arrangements for avoiding conflict of interest and separate the different business functions could be relevant for the RRMs that offer reporting services to third parties. If an RRM is MP that is reporting only its own data, the RRM activities cannot be separated and isolated from the MP business processes because the reporting system will be feeded with data from the information systems of the MP.
RRMs shall have sound security mechanisms in place designed to guarantee the security and	BG: (Drafting):

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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 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~~ **to ensure the continuity and the provision of** its services~~.~~ PL: (Drafting): RRMs shall have sound security mechanisms in place designed to guarantee **to extent possible** 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~~ **to ensure the continuity and the provision of** 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	BG:

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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.	(Drafting): RRMs shall, **together with market participants, enable a mechanism allowing to** ~~have systems in place that can~~ effectively check transaction reports for completeness~~, identify omissions~~ and obvious errors related to the **technical validity of the data** 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 reports.~~ BG: (Comments): It is difficult for RRM to know if transaction reports are correct, therefore is wiser to make sure that RRM put in place a mechanism together with market participants and that is workable and effective. The RRMs could technically validate the data provided for reporting by the MPs and inform them by alarm, return receipt, etc. about potential issues with the data completeness and/or format. The MPs are the parties with obligations to provide data to ACER and it is their responsibility to initiate the eventual resubmission of data to the RRM, after being alerted by the RRM about a data quality problem at

Presidency compromise text	Drafting Suggestions Comments
	the MP side. **The RRM cannot be liable or responsible for MP's omissions or disregard of the RRM indication of a data quality issue.**
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.	PL: (Drafting): 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. PL: (Comments): As it was mentioned in the definition of RRM, currently, there are also RRMs that submit data to ACER on their own behalf only. There is also different scope of reported data – e.g. there are RRMs who report only fundamental data or all types of data.
4. The Agency may withdraw the	

Presidency compromise text	**Drafting Suggestions** **Comments**
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;	BG: (Drafting): (a) ~~does not make use of the authorisation within 18 months or~~ has ~~provided~~ **offered** no services for the preceding 18 months; BG: (Comments): The difference between "does not make use of the authorisation" and "provided no services" is not clear. *"Do not make use of the authorization"* is not a clear expression. Occasions when the service was offered but not used by the MPs, should not be a reason for withdrawal of authorization.
(b) obtained the authorisation by	

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	

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	PL: (Drafting): **In such a decision the Agency shall also 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.** PL: (Comments): We propose to add this paragraph to ensure there is an appropriate appeal procedure. Alternatively it could be considered to amend the Regulation 2019/942 (article 2d)
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.	

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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**	BG: (Drafting): **Where the Agency has withdrawn** authorisation**, the RRM** shall ensure orderly substitution including ~~the transfer of data to other RRMs and the redirection of reporting flows to other RRMs~~ **completion of the initiated reportings to ACER and provision to each organization that used the RRM reporting services (MP, OMP, etc.) the reported files to ACER on behalf of the respective party together with the return receipts issued by ACER for the relevant reports. This historical reports and receipts must include at least the data reported to ACER within the previous 12 months from the date of the withdrawal of the RRM authorization. This data shall be provided in the relevant electronic format, as defined by ACER in accordance with Article 10(3) of Regulation (EU) No 1348/2014, in decrypted form.**. 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,~~ ~~**but not less than three months**~~ ~~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.~~

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of an authorisation.	BG: (Comments): It is MPs' responsibility to report data to ACER in accordance with the regulation, respectively **to arrange their contractual relations and technical measures for exchange with a new RRM**. The RRMs cannot transfer the data or redirect the reporting to another RRM because on their own decision or on behalf of the MPs because: - The MPs should be allowed to select new RRM(s); - The RRM with withdrawn authorization suffers from issued which are incompatible for the provision of reporting services, regardless of the destination – ACER ARIS or another RRM. It would be reasonable and meaningful, the "suspended" RRM to have obligations to: - Complete all pending (at the moment of withdrawal of authorization) data submissions to ACER; and - Provide to the MPs the historically reported data and the ACER ARIS return receipts (that the RRM is obliged to store for a period of at least 12 months – according to "ACER RRM Requirements"), in decrypted form and in the respective electronic format, in accordance with Article 10(3) of Regulation (EU) No 1348/2014 (REMIT Implementing Regulation). If an RRM is incompliant with the requirements to perform reporting activities to ACER, it should not be in a

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	position to "redirect" the reportable data to ACER through another RRM. The provision for *"redirection of reporting flows to other RRMs"* is a non-sense and contradict to the concept for "withrawal" of the RRM authorization. The MPs that were using the services of the "suspended" RRM should: 1. be given sufficient time to establish contractual relations and establish channels for data exchange with new RRM(s); get the historically reported to ACER data through the "suspended" RRM because based on some national provisions, the NRAs could request such details from the MPs. PL: (Drafting): **Where the Agency has withdrawn an** ~~*An RRM whose*~~ authorisation**, the RRM** concerned ~~*has been withdrawn*~~ shall inform impacted Market Participants about decision issued by the Agency, in order to make the needed arrangements with other RRMs. The RRM may, upon the request of Market Participants, transfer the data or redirect reporting flows to another RRM. ~~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**

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	shall give the RRM a reasonable time period of at least six months for ~~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. PL: (Comments): The Market Participants should decide what new RRMs they chose for reporting their data if their RRM ceases to be authorized, this cannot be a decision by the RRM. It is MPs' responsibility to report data to ACER in accordance with the regulation, respectively to arrange their contractual relations and technical measures for exchange with a new RRM.
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~~a~~** decision to	BG: (Drafting): The Agency shall, ~~where relevant,~~ without undue delay, notify the national **regulatory** ~~competent~~ authority in the Member State where the RRM is established, and inform market participants **associated to the concerned RRM** of the decision to withdraw the authorisation ~~of an RRM.~~ **at least six months before its**

Presidency compromise text	Drafting Suggestions Comments
withdraw the authorisation of an RRM.	**entry into force.** BG: (Comments): ACER must inform the Market Participants associated to the RRM at least six months in advance, before the withdrawal of the authorization of a particular RRM, in order to allow the concerned Market Participants to make the needed technical, contractual and organizational arrangements with other RRM(s).
	BG: (Drafting): **The RRM whose authorization was withdrawn cannot be prevented to re-initiate RRM registration with ACER after rectification of the reason for the ceased authorization.** BG: (Comments): Proposal for a new provision
6~~5~~. **By [two years after entry into force of the amending regulation],**	

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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	

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to in paragraph 5;	
(cc) the details concerning the process of orderly substitution referred to in paragraph 5;	PL: (Drafting): **(cc) the details concerning the process of ~~orderly~~ substitution referred to in paragraph 5;** PL: (Comments): The obligation to ensure substitution in the case of the registration withdrawal by the RRM is not proportional and does not sufficiently protect the interest of the Market Participants associated to the RRM concerned. We propose to amend this fragment as the Market Participants should be the ones mostly concerned with the transfer od their data to another RRM and based on provided information decide whether to trasnfer the data themselves or request RRM to do it on their behalf. As such it should not be an automatic process in which RRMs are solely decidining when, how and to whom transfer the data published on their platform.
(d) the detailed arrangements for	

Presidency compromise text	**Drafting Suggestions** **Comments**
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	

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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	NL: (Drafting): “(1a) The Agency ~~National regulatory authorities~~ shall establish mechanisms to enable national regulatory authorities to share information they receive in accordance with Article 7(2) and Article 8 with the competent

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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**”;	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 Agency shall consult 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**~~ In the new proposed text, responsibility still lies with NRAs. Even with inclusion of non-binding guidelines, NL sees risks in a situation where all different NRAs come up with different mechanisms for information sharing, which could result in a serious liability. NL still considers that ACER, that is already collecting the data, is better placed to establish EU wide mechanisms. Therefore, NL advocates to leave the responsibility for developing the mechanisms with ACER (see text suggestion). NL: (Comments): NL is still on the opinion that the Agency is best placed to carry out this task. This would be the only way to avoid a situation where all different NRAs come up with different mechanisms for information sharing, which could result in a seriouse liability. The Agency, that is already collecting the data is better placed to

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	establish EU wide mechanisms. The addition on non-binding guidelines by the Agency is an improvement compared to REV1, but does not take the concerns away. In the new proposed text, responsibility still lies with NRAs. Even with inclusion of non-binding guidelines, NL sees risks in a situation where all different NRAs come up with different mechanisms for information sharing, which could result in a serious liability. NL still considers that ACER, that is already collecting the data, is better placed to establish EU wide mechanisms. Therefore, NL advocates to leave the responsibility for developing the mechanisms with ACER (see text suggestion). PL: (Comments): It has to be highlighted that those new obligations imposed on NRAs, and other entities, could lead to a significant administrative burden.
[c] the following paragraph 2a is	

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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:	NL: (Drafting): At the request of a national regulatory authority, the Agency shall review if authorities have set up systems that meet the requirements in Article 12(1). The Agency shall send it's conclusions and recommendations to the national regulatory authority. National regulatory authorities shall give access to the mechanisms referred to in paragraph 1a of this Article only to authorities which, in accordance with the conclusions and recommendations of the Agency, have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1)." NL: (Comments): Text proposed to avoid situations where different NRAs apply different control mechanisms. This responsibility should be kept at ACER.

Presidency compromise text	**Drafting Suggestions** **Comments**
[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**~~*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	

Presidency compromise text	**Drafting Suggestions** **Comments**
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**~~*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. **The Agency**~~*ACER*~~ **may** ~~*shall not be*~~	BG: (Drafting): “2. Subject to Article 17, the Agency 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* publish*ing* **aggregated** information on organised market places, IIPs **and**, RRMs **in compliance with***according to* applicable data protection laws.”;~~ BG:

Presidency compromise text	Drafting Suggestions Comments
~~*prevented from*~~ publish~~*ing*~~ **aggregated** information on organised market places, IIPs **and**~~,~~ RRMs **in compliance with**~~*according to*~~ applicable data protection laws.”;	(Comments): It is not clear what detailes ACER shall publish “on OMPs, IIPs, RRMs” and what would be the benefit for the market of the publication for IIPs, OMPs, RRMs – which according to Artcile 17 must be in summary and aggregated form. NL: (Drafting): 22. Subject to Article 17, **the Agency**~~ACER,~~ as well as the national regulatory authorities, 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*~~ publish~~*ing*~~ **aggregated** information on organised market places, IIPs **and**~~,~~ RRMs **in compliance with**~~*according to*~~ applicable data protection laws.”;.**National regulatory authorities can make their commercially non-sensitive data available for scientific purposes, subject to confidentiality requirements and in accordance with national law.** NL: (Comments):

Presidency compromise text	**Drafting Suggestions** **Comments**
	NL is of the opinion that NRAs also have a role in providing information related to their markets. Addition to enable NRAs to share data for scientific purposes. PL: (Drafting): "2. Subject to Article 17, **the Agency**~~*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. ~~**The Agency***ACER* **may** *shall not be prevented from* publish*ing* **aggregated** information on organised market places, IIPs **and**, RRMs **in compliance with***according to* applicable data protection laws.";~~ PL: (Comments): Sugesstion to delete it as it is not clear what detailes ACER shall publish "on OMPs, IIPs, RRMs".
[14] Article 13 is amended as follows:	

Presidency compromise text	**Drafting Suggestions** **Comments**
[a] paragraph 1 is replaced by the following:	
"1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation**s** set out in Articles 4, 8, 9 and 15 are applied.	
National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation thereto, irrespective of where the market participant registered pursuant to Article 9(1) carrying out those acts is resident or established.	PL: (Drafting): 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 is under an obligation to register pursuant to Article 9(1) or registered pursuant to Article 9(1) carrying out those acts is resident or established. PL:

COMMENTS FROM: LV CZ IE DK IT BG NL ES LT PL HU

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): We propose to amend this article to ensure NRA can fulfill the obligations outlined in art.9.
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	

Presidency compromise text	**Drafting Suggestions** **Comments**
(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).”;	BG: (Drafting): 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).”; BG: (Comments): Please refer to the argumentation provided for: - Whereas (14) and Article 1(8a) PL:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): 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)."; PL: (Comments): "Executing" is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. HU: (Drafting): 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).";

Presidency compromise text	**Drafting Suggestions** **Comments**
[b] the following paragraphs (3) to (~~9~~7) are added:	ES: (Drafting): ~~[b] the following paragraphs (3) to (9~~7~~) 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~~to~~ it by and in accordance with Articles 13a and 13b.	BG: (Drafting): 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**, in close and active cooperation with the relevant competent national regulatory authorities,** carry out investigations by exercising the powers conferred on it by and in accordance with Articles 13a to 13b. BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.**

Presidency compromise text	Drafting Suggestions Comments
	The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4). **In case that the clauses of Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d are not deleted,** **we would like to propose some changes:** ***ACER should be only empowered to assist the NRAs in their investigations.*** ES: (Drafting): ~~"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~~

Presidency compromise text	Drafting Suggestions Comments
	~~Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.~~ ES: (Comments): ES agrees that market abuse cases involving multiple cross-border elements and market participants established outside the Union could be, in some cases, particularly challenging from an enforcement perspective. However, article 16.1 already covers the cooperation at Union level, specifying the role of ACER, who shall aim to ensure that national regulatory authorities carry out their tasks under REMIT in a coordinated and consistent way. In order to ensure the effectiveness of REMIT implementation within the European Union, this cooperation could be reinforced by different means without interferring with NRA's investigations powers and always maintaining ACER's coordinating role and ensuring its assistance to the NRAs when necessary. Moreover, in the current cooperation procedure, a NRA is designated as the leader of the investigation (and responsible for it). Hence, ES considers that governance issues, established in articles 13.3-7 and 13a-13d, are not appropriate, nor proportionate and may affect the effectiveness of REMIT implementation within the European Union. Moreover, introduction of ACER investigatory powers undermines the principles of subsidiarity laid down in

Presidency compromise text	Drafting Suggestions Comments
	Article 5(3) of TFEU. As an example, a discrepancy between the results of the investigations carried out (in parallel) by ACER and the correspondent NRA could be taken into account by the involved MPs during the appealing phase. Since ACER has strong analytical capabilities and CEER, besides of the analytical capabilities, has the experience of enforcing regulation at a national level (only the NRAs know the specificities of their own markets and that position them better to investigate), ES strongly advocates to delete all the mentioned articles but agrees to reinforce ACER's coordination tasks and to maintain ACER's tasks related to NRA investigation assistance.
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:	NL: (Drafting): 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: (i) acts are being or have been carried out on wholesale energy products that have not been investigated and are not being investigated by a relevant national regulatory authority; or (ii) the relevant national regulatory authorities have notified the Agency that there is no intention to investigate the acts that are being or have been carried out on wholesale energy products; or

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	iii) a relevant national regulatory authority has ended an investigation without concluding whether a breach has taken place. For cases where 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: NL: (Comments): NL values to strengthen the role of ACER, but considers it important that the lead remains with the NRA's. In addition to the 'cross border criteria's in the text, NL proposes to add additional conditions to specify the cross-border cases where ACER can exercise its powers ES: (Drafting): ~~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:~~ PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Drafting): 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: PL: (Comments): There is no need for ACER to step in about lack of fulfilling obligations; this is something NRAs are well trained in and they are in a good position to deal with lack of inside information disclosure. Such proposal can be detrimental for the already well developed and functioning balance of power between ACER and NRAs.
(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or	IT: (Drafting): **~~(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or~~** IT:

Presidency compromise text	Drafting Suggestions Comments
	(Comments): The suggestion is based on the principle of subsidiarity, to avoid unnecessary and burdensome overlapping between national and European competences, while ensuring greater transparency towards operators. To this end it is important that the exercise of investigative powers by the Agency is limited only to cases which determine a genuine jurisdictional issue between national authorities. These cases would be covered by points c) and d) described below. ES: (Drafting): ~~(a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or~~ PL: (Drafting): (a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member

Presidency compromise text	**Drafting Suggestions** **Comments**
	States and national regulatory authorities concerned don't express their objection; 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 **and under an obligation to register**~~but registered~~ pursuant to Article 9(1); or	DK: (Drafting): IT: (Drafting): ~~**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 and under an obligation to registerbut registered pursuant to Article 9(1); or**~~ IT:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): See comment on deletion of previous point a) ES: (Drafting): ~~(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~~ **~~and under an obligation to register~~** ~~but registered pursuant to Article 9(1); or~~ PL: (Drafting): (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 and **under an obligation to register** pursuant to Article 9(1) and national regulatory authorities concerned don't express the objection; 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) **in cases having a cross-border impact.**~~; or~~	IT: (Drafting): (c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not ~~immediately~~ take **within 3 months** 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~~ IT: (Comments): In order to exercise substitutive powers a certain timing should be set according with the general provisions on substitutive powers in decision making when NRAs do not agree on cross-border matters in Regulation 942/19. NL: (Drafting): (c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), has ended an investigation referred to in Article 16(4)(b) without concluding whether a breach has taken place; or

Presidency compromise text	Drafting Suggestions Comments
	(c1) an investigatory group as referred to in Article 16(4)(c), had ended an investigation without concluding whether a breach has taken place; or (c2) the competent national regulatory authority has requested the Agency to take over an investigation referred to in Article 16(4)(b); **in cases having a cross-border impact.** NL: (Comments): NL finds that the meaning of "immediately take the necessary measures" leaves too much room for interpretation. If for example due to lack of resources an NRA or an investigatory group of NRAs decides not to continue an investigation of a suspected breach that ACER has brought to its attention, ACER should have the opportunity to take over such an investigation. However, if the NRA concludes that a breach cannot be established, there should not be such a possibility for ACER. Also, NRA's should have the possibility to ask ACER to take over an investigation, for example if they consider ACER to have better access to the data and analysis tools needed for factfinding. ES: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
	~~(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~~ PL: (Drafting): (c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5) and without explanations, does not ~~immediately~~ take the necessary measures envisaged in national law 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.~~	IT: (Drafting): Add a new point: (d) **the competent national regulatory authority requests the Agency to exercise its powers in acts that,**

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	even if not falling in points c), have a cross-border dimension. IT: (Comments): NRAs should be able to request the intervention of the Agency in cross-border cases for different reasons such as the availability of insufficient resources or specific jurisdictional limitations in the implementation of Remit in its MS as it might happen in cases in which the market participant (MPs) is based in third country, ecc LT: (Drafting): (d) the competent national regulatory authority requests ACER to exercise its powers in acts that, even if not falling within points a), b) or c), have a cross-border dimension. LT: (Comments): Additionally, we suggest to specify that at the request of NRAs ACER could use its investigatory power.

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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.	BG: (Drafting): ~~**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.**~~ BG: (Comments): The NRAs are in a position and competent to surveille and investigate eventual breaches of related to fulfillment of the transaprency reqirements and the disclosure of inside information. Please consider that the information defined in Article 2(1) includes also the full set of transparency data (under the Transparency Guidelines and network codes) that the Market Participants/TSOs should publish. At present, this is within the competences of the NRAs. This new provision authorizes ACER to investigate every issue related to data publication because the EU enerhy market is well interconnected and it could be considered that each data, subject to transparency obligations, could have effect on the market in more than 3 Member States.

Presidency compromise text	Drafting Suggestions Comments
	NL: (Drafting): Addition of (4b): [4a..] 4b. The Agency may exercise its powers to ensure that the obligations set out Article 8 are applied where: a) A suspected breach affects the monitoring of trading activity by the Agency referred to in Article 7 in wholesale energy products in at least three Member States; or A suspected breach affects the quality of information sharing referred to in Article 10 in at least three Member States. NL: (Comments): Complete and correct reporting in accordance with Article 8 is a precondition to effective and efficient enforcement of Articles 3 to 5. ACER is best in place to find misreporting in its monitoring system and should be able to act upon finding suspected breaches that affect multiple Member States.

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	ES: (Drafting): ~~**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.**~~ PL: (Drafting): ~~**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.**~~ PL: (Comments): This appears to be an unnecessary ACER entitlement. Any violation related to the obligation to publish inside information is capable of being investigated by the national NRA. Whether this violation affected prices in

Presidency compromise text	Drafting Suggestions Comments
	other wholesale markets is irrelevant here. It is sufficient that the market participant that committed the violation is operating in a wholesale market in the NRA's jurisdiction.
	DK: (Drafting): 4b. The Agency may exercise its powers to ensure that the obligations set out in Article 8 are applied where: 1. A suspected breach affects the monitoring of trading activity by the Agency referred to in Article 7 in wholesale energy products in at least three Member States; or 2. A suspected breach affects the quality of information sharing referred to in Article 10 in at least three Member States. DK: (Comments): ACER should be able to exercise its' powers in the proposed sistuations also. PL: (Drafting):

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	5. **The Agency shall exercise the powers referred to in paragraph 4 upon a request or approval of one or more regulatory authorities of concerned 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.	BG: (Drafting): 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. BG: (Comments): Please refer to the argumentation provided for: - Whereas (14) and Article 1 (8a) ES: (Drafting): ~~5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the~~

Presidency compromise text	Drafting Suggestions Comments
	~~persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.~~ ES: (Comments): This provision is not neccesary at all, since the supervision of PPATs is already coordinated among NRAs and with ACER. Indeed, there is a dedicated Task Force within ACER where NRAs share their experience on PPAT supervision and their conclusions on the efficiency of their market monitoring. Also, <u>each PPAT is supervised by at least one NRA</u> (and, where appropriate, a group of NRAs) and in any event, other NRAs are not prevented to approach this PPAT when necessary. PL: (Drafting): ~~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.~~ PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): There is no need for ACER to pursue an investigation in relation to obligations set out in Article 15. That Article impose an obligation for PPATs to monitor orders to trade and transactions and notify potential beraches of Article 3 nad 5 to ACER and national regulatory authority. Thefore it is not PPAT's actions, but the maret paticipant's ones, that potentially could have affected with cross-border dimension the wholesale energy products. The mere issue, whether PPATs have in place adequate monitoring system and notify potential breaches is something that NRAs are are in a good position to deal with. Moreover, "executing" is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. HU: (Drafting): 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.

Presidency compromise text	**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 **facts**~~cases~~ by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.	LV: (Drafting): 6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same **findings**~~cases~~ by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation. LV: (Comments): "Facts" might not be the right word here considering the possibility that the case is closed without a breach of REMIT. We suggest replacing the word "facts" with "findings". ES: (Drafting): ~~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.~~

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	PL: (Comments): It would be beneficial to the market transparency to oblige the Agency to publish information about findings from conducted investigations, stating what kind of data was checked, inside information publications verified, etc. while securing the data confidentiality.
7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, **4a and 5** the Agency shall draw up a**n 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~~	CZ: (Comments): **Request for clarification:** What is the meaning of the insertion of a new power for the Agency? This may contradict the principle of the presumption of innocence, where only the Member State or the national regulatory authority should be aware of the preliminary findings. Furthermore, recital 22 does not reflect this change. IT: (Drafting): 7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, 4a and 5 the Agency

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~~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**	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 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 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 in accordance with Articles~~s~~ 18. In the investigation report the Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission IT: (Comments): We do not see any advantages in the publication of a report of preliminary findings of an investigation and we rather deem that the publication of preliminary findings might compromise other investigations conducted

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exercising those rights. If the Agency con**siders**~~cludes~~ **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 the**y take necessary measures including** ~~breach be dealt with~~ in accordance with Article~~s~~ 18. **In the investigation report t**~~T~~he Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.”;	eventually by the competent authorities of MSs on the same suspected breech or other investigations connected on the same MPs. BG: (Drafting): 7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, **4a and 5** the Agency shall draw up a**n 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 con**siders**~~cludes~~ **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 the**y take necessary measures including** ~~breach be dealt with~~ in accordance with Article~~s~~ 18. **The national**

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	regulatory authority is not obliged to accept conclusion of the legal assessment carried out by the Agency. The procedural guarantees and fundamental rights of the persons concerned shall be fully respected by the national regulatory authority according to applicable national law. **In the investigation report t**~~T~~he Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission."; BG: (Comments): Article 18 only sets minimum standards for the rules on penalties applicable to infringements of the Regulation that should be lay down by Member States. However, because of the fact that ACER's conclusion on a breach of the Regulation will not take the form of formal decision, that could be reviewed by the Court of Justice, there is a need to ensure protection of procedural guaranties and fundamental rights of the persons concerned. They should be able to comment on the fact, provide evidence or argumentation in their favour towards the national regulatory authority and national regulatory authority should be empowered to decide on the case based on all evidence and information (both gathered directly or received from ACER). Such decision should include assessment in relation to occurrence the breach and, if the regulatory authority is convinced that the breach took place, also measures and/or sanction referred to in Article 18 (2).

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	NL: (Drafting): […] **<u>The investigation report shall also include all evidence on which the preliminary findings have been based</u>**. Besides the investigation report, the Agency shall provide the relevant national regulatory authorities with the case file containing all incriminating and exculpatory evidence relevant to the report. The Agency shall provide a translation of the report in the official languages of the relevant Member States. NL: (Comments): The NRAs involved should be able to scrutinise the full report. This is only possible if NRAs receive the full case file with all underlying evidence in documents, data, recordings, code used for analysis etc. and not only the description of the evidence in the report on which the Agency based her findings. NRAs might find other information in the case file important as well. Having the full case file including both incriminating and exculpatory evidence is also necessary to provide for a fair procedure to the (legal) persons that are accused of a breach and if necessary to defend the case in court. NRAs should be able to decide to include further

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	information when deciding on possible follow up in accordance with national law. ES: (Drafting): ~~7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4,~~ **~~4a and 5~~** ~~the Agency shall draw up a~~**~~n 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 con~~**~~siders~~~~cludes~~ **~~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 the~~**~~y 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,~~

Presidency compromise text	Drafting Suggestions Comments
	~~where necessary, inform the Commission.";~~ ES: (Comments): Although ES claims for the complete withdrawal of these provisions, in case that wasn't possible, it seems especially very problematic to state that the summary of the preliminary findings shall be made public by the Agency, in particular when no final decision had been taken yet (or even worse, when the case hasn't been enforced by the competent NRA). This may dessiminate misleading messages for the market and give advantages to the potential breachers (as mentioned in the comments provided in article 13.3, a discrepancy between the results of the investigations carried out, in parallel, by ACER and the correspondent NRA may be taken into account by the involved MPs during the appealing phase). Hence, ES strongly disagrees with this part and asks for its complete withdrawal. PL: (Drafting): 7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4 **, ~~4a and 5~~** the Agency shall draw up a**n investigation** report **setting out the Agency's preliminary findings. The investigation**

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	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 con**siders**~~cludes~~ **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~~suggest that the**y take necessary measures including** ~~breach be dealt with~~ in accordance with Article~~s~~ 18. **The national regulatory authority is not obliged to accept conclusion of the legal assessment carried out by the Agency. The procedural guarantees and fundamental rights of the persons concerned shall be fully respected by the national regulatory authority according to applicable national law. In the investigation report t**~~T~~he Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission."; PL:

Presidency compromise text	Drafting Suggestions Comments
	(Comments): There is no need for ACER to step in about lack of fulfilling obligations set out in Article 4; this is something NRAs are well trained in and they are in a good position to deal with lack of inside information disclosure. Such proposal can be detrimental for the already well developed and functioning balance of power between ACER and NRAs. There is no need for Acer to pursue an investigation in relation to obligations set out in Article 15. That Article impose an obligation for PPATs to monitor orders to trade and transactions and notify potential breaches of Article 3 and 5 to ACER and national regulatory authority. Therefore it is not PPAT's actions, but the market participant's ones, that potentially could have affected with cross-border dimension the wholesale energy products. The mere issue, whether PPATs have in place adequate monitoring system and notify potential breaches is something that NRAs are are in a good position to deal with. Article 18 only sets minimum standards for the rules on penalties applicable to infringements of the Regulation that should be lay down by Member States. However, because of the fact that ACER's conclusion that there was a breach of the Regulation will not take a form of formal decision, that could be reviewed by the Court of Justice, there is a need to ensure protection of procedural guaranties and fundamental rights of the persons concerned. They should be able to comment on the fact, provide evidence or argumentation in

Presidency compromise text	Drafting Suggestions Comments
	their favour towards the national regulatory authority and national regulatory authority should be empowered to decide on the case based on all evidence and information (both gathered directly or received from ACER). Such decision should include assessment in relation to occurrence the breach and, if the regulatory authority is convinced that the breach took place, also measures and/or sanction referred to in Article 18 (2).
	PL: (Drafting): National Regulatory Authority, upon receiving the investigation report, shall decide whether the report is sufficient to take necessary measures including in accordance with Article 18 or informing relevant authorities in accordance with the national law. PL: (Comments): There is a need for NRA to conduct certain activities as ACER is not taking a decision and the report itself might not be a sufficient legal basis for conducting any follow-up actions regarding the breach of REMIT.
[15] The following articles 13a to 13d are inserted:	ES: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
	~~[15] The following articles 13a to 13d are inserted:~~ ES: (Comments): As mentioned above, ES considers that governance issues, established in articles 13.3-7 and 13a-13d, are not appropriate, nor proportionate and may affect the effectiveness of REMIT implementation within the European Union. Moreover, introduction of ACER investigatory powers undermines the principles of subsidiarity laid down in Article 5(3) of TFEU. As an example, a discrepancy between the results of the investigations carried out (in parallel) by ACER and the correspondent NRA could be taken into account by the involved MPs during the appealing phase. Moreover, the reinforcement of the cooperation between ACER and NRAs in cross-border cases could be achieved through Article 6(8) of ACER regulation, which already allows that "*Upon the request of a regulatory authority, ACER may provide operational assistance to that regulatory authority regarding investigations pursuant to Regulation (EU) No 1227/2011.*"
"Article 13a	CZ: (Comments):

Presidency compromise text	**Drafting Suggestions** **Comments**
	Despite the proposed amendments in the third revision, on-site inspections, to the extent they are currently included in the text, may in our view undermine the principle of subsidiarity of EU law vis-à-vis the law of the Member States. ES: (Drafting): ~~"Article 13a~~
On-site inspections by the Agency	ES: (Drafting): ~~On-site inspections by the Agency~~ PL: (Comments): Investigative and sanctioning powers should remain at national level and ACER should make more efficient and effective use of the powers and tools granted under the current provisions of the REMIT Regulation.

Presidency compromise text	**Drafting Suggestions** **Comments**
	Should ACER be given any additional competences in this regard, it should not conduct it automatically, but either based on approval or request from all concerned regulatory authorities.
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.	ES: (Drafting): ~~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.~~
	PL: (Drafting): The Agency shall exercise the powers to conduct on-site inspections upon a request or approval of concerned regulatory authorities. PL: (Comments): There is a need for explicit approval or request from NRAs as MSs have primacy in investigative powers.

Presidency compromise text	Drafting Suggestions Comments
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**.	LV: (Drafting): 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, subject to the provisions of recital 22a of the preamble**. Where the proper conduct and efficiency of the inspection so require, **in an exceptional case** 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**. LV: (Comments): There have already been difficulties in aligning REMIT Regulation with national regulation in terms of strengthening the scope of the national regulatory authority's powers and ensuring a more efficient evaluation of possible violations. As a justification, it is mentioned that the performance of certain activities significantly limits the rights of individuals and is essentially more like the performance of criminal procedural activities. Powers are often

Presidency compromise text	Drafting Suggestions Comments
	associated with very significant restrictions on the fundamental rights of individuals. IT: (Drafting): In order to fulfil its obligations under **this Regulation and specifically on the basis of a request of a competent authority of a MS or in case the competent authority does not take within 3 months the necessary measures , as specified in 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**. IT: (Comments): It's essential to specify better the perimeter under which the powers of investigation of ACER can be exercised on cross-border cases, coherently with the suggestion proposals on art. 13(4).

Presidency compromise text	Drafting Suggestions Comments
	ES: (Drafting): ~~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~~**~~.~~ PL: (Drafting): 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**

Presidency compromise text	Drafting Suggestions Comments
	<u>inspection shall be empowered to affix seals for the period of time necessary for the inspection</u>. PL: (Comments): There is no need for ACER to step in about lack of fulfilling obligations set out in Article 4; this is something NRAs are well trained in and they are in a good position to deal with lack of inside information disclosure. Such proposal can be detrimental for the already well developed and functioning balance of power between ACER and NRAs. There is no need for ACEr to conduct an inspection in relation to obligations set out in Article 15. That Article impose an obligation for PPATs to monitor orders to trade and transactions and notify potential breaches of Article 3 and 5 to ACER and national regulatory authority. Therefore it is not PPAT's actions, but the market participant's ones, that potentially could have affected with cross-border dimension the wholesale energy products. The mere issue, whether PPATs have in place adequate monitoring system and notify potential breaches is something that NRAs are are in a good position to deal with.
3. ~~The officials of and other persons authorised by the Agency to~~	DK:

Presidency compromise text	Drafting Suggestions Comments
~~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:**	(Drafting): **To the extent necessary for the inspection** and taking into consideration not to prohibit the company to fulfil its operational obligations as far as possible**, the officials of and other persons authorised by the Agency to conduct an on-site inspection are empowered:** DK: (Comments): We think it is important to make sure that it is taken into consideration that on-site inspections do not prevent companies from fulfilling their operational obligations, thereby causing cascade effects further down in the supply chain. ES: (Drafting): 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**

Presidency compromise text	Drafting Suggestions Comments
	~~**necessary for the inspection, the officials of and other persons authorised by the Agency to conduct an on-site inspection are empowered:**~~ PL: (Comments): It should be noted that the catalogue of persons who may perform inspections on behalf of ACER is open ("and other persons authorized"). In this situation, it is possible that an employee of the entity providing services to ACER (e.g. a consulting company) will receive the appropriate authorization. Conducting an inspection by persons who are not employees of a public administration body may be negatively perceived by entities subject to such an inspection. Perhaps it would be worth considering limiting the possibility of carrying out inspections to employees of ACER and the relevant NRA, possibly also including persons responsible for technical activities or e.g. translations. The participation of the authority's employee in this activity should be guaranteed.
(a) to enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6;	ES: (Drafting): ~~**(a) to enter any premises of the persons subject to an investigation decision adopted by the Agency**~~

Presidency compromise text	Drafting Suggestions Comments
	~~**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;	ES: (Drafting): ~~**(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;	ES: (Drafting): ~~**(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	ES: (Drafting): ~~**(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;**~~

Presidency compromise text	Drafting Suggestions Comments
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.	ES: (Drafting): **~~(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.~~** PL: (Drafting): **(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. Exercising of this empowerment should be in compliance with fundamental right of persons concerned and with procedural guarantees set out in Article 13c.** PL:

Presidency compromise text	Drafting Suggestions Comments
	(Comments): As Article 13c indicates only procedural guarantees for the market participants, and not for their representatives and members of staff, it should be clarified that fundamental rights of the persons questioned by the Agency are also protected.
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	ES: (Drafting): ~~**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.**~~ PL: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
state the reasons that have led the Agency to conclude that a suspicion as referred to in the first sentence of this paragraph exists.	**~~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.~~** PL: (Comments): Nevertheless Poland does consider an introduction of this provision as excessive and undermining existing balance between the competences of Member States and ACER.
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	LV: (Drafting): 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**

Presidency compromise text	Drafting Suggestions Comments
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~~.	**object on the grounds that investigations related to the same findings 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~~. LV: (Comments): "Facts" might not be the right word here considering the possibility that the case is closed without a breach of REMIT. We suggest replacing the word "facts" with "findings". IT: (Drafting): NL: (Drafting): 4. ~~In sufficient time~~ At least five days 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

Presidency compromise text	Drafting Suggestions Comments
	is to be conducted. NL: (Comments): NL would like to see 'sufficient time' clarified. NL finds that NRAs and other authorities need sufficient time to review a planned inspection in order to be able to object if needed, hence the five day proposal. ES: (Drafting): ~~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~~. PL:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): 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** to those inspections ~~**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~~. PL: (Comments): The NRA, after obtaining information from ACER, should be able to initiate proceedings in this case. In the current wording, from the moment of ACER's intervention, the competent NRA will not be able to raise objections. The deletion of the general norm allowing the relevant NRA to submit an objection ("relevant authority has confirmed that it does not object to those inspections") does not seem appropriate. The national regulatory authority should have a right to object to ACER'S inspection also on other grounds.

Presidency compromise text	**Drafting Suggestions** **Comments**
	HU: (Drafting): Inspections under this Article shall be conducted ~~provided that~~ after approval by 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~~. HU: (Comments): The proposed significant new powers to the Agency, like onsite inspections, appear in conflict with national enforcement regimes. To maintain an efficient and proportionate surveillance regime, investigation of identified breaches and enforcement of sanctioning, including the definition and the determination of appropriate penalties, should exclusively be performed by national regulatory authorities.
5. The officials of and other persons authorised by the Agency to	ES:

Presidency compromise text	**Drafting Suggestions** **Comments**
conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.	(Drafting): ~~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**~~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	ES: (Drafting): ~~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~~**~~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~~ PL:

Presidency compromise text	Drafting Suggestions Comments
regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.	(Comments): The indicated elements of ACER decision is not identical as in art. 13b (2). As a component of the decision regarding the request for information, the possibility of appealing to the Board of Appeal was additionally indicated. This suggests that in the art. 13b (2) the possibility of appeal is shaped differently. Each ACER decision should be subject to instance review.
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**~~enjoy~~ the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon	LV: (Drafting): 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**, within the scope of measures as referred to in paragraph 10 point (b),** the officials of and other persons authorised by the Agency. To that end they shall **have**~~enjoy~~ the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon request. LV: (Comments):

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request.	The scope of "shall [..] actively assist" is unclear and can be interpreted broadly, including by the Agency. A reference to paragraph 10 point (b) might clarify the scope. NL: (Drafting): …To that end they shall have the powers set out in this Article without prejudice to their powers under national law. NL: (Comments): The regulation should not set aside powers of NRAs that they have under national law. ES: (Drafting): ~~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~~**~~enjoy the powers set out~~

Presidency compromise text	Drafting Suggestions Comments
	~~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.	ES: (Drafting): ~~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~~.

Presidency compromise text	Drafting Suggestions Comments
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.**	ES: (Drafting): ~~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.**~~ PL: (Drafting): 9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires prior 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. Authorisations made by juditial authorities shall also be subject to an appeal in accordance with the national law.**

Presidency compromise text	Drafting Suggestions Comments
	PL: (Comments): Inspections should not be conducted as a precautionary measure. An inspection of the private premises of employees of the entity under investigation may be carried out on the basis of ACER's decision. According to Art. 28 (1) of Regulation 2019/942, in the absence of any other provisions of law, there is an appeal procedure against these decisions. However, no possibility of appeal to a national court was provided. In the Polish legal system, the search procedure is governed by the provisions of the Code of Criminal Procedure, according to which a search may be carried out by a prosecutor, or by the Police on the order of a court or a prosecutor. It seems that in order to ensure systemic cohesion, the cognition of national courts should be ensured.
10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:	ES: (Drafting): ~~10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:~~

Presidency compromise text	**Drafting Suggestions** **Comments**
(a) that the decision of the Agency is authentic; and	ES: (Drafting): ~~(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.	ES: (Drafting): ~~(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	ES: (Drafting): ~~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~~

Presidency compromise text	Drafting Suggestions Comments
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.	~~(EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.~~
Article 13b	ES: (Drafting): ~~Article 13b~~
Request for information	ES: (Drafting): ~~Request for information~~

Presidency compromise text	**Drafting Suggestions** **Comments**
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:	BG: (Drafting): 1. At the Agency's request any natural or legal person **that according to the Agency findings might be in possession of information relevant to an investigation** shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations in Article 13(4), (4a) and (5). In its request the Agency shall: BG: (Comments): *"Any person"* could set too wide scope of ACER powers in the light of the Agency obligations under REMIT. ES: (Drafting): ~~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~~

Presidency compromise text	Drafting Suggestions Comments
	~~request the Agency shall:~~ PL: (Drafting): 1.At the Agency's request any **~~natural or legal~~** person, that according to the Agency findings might be in possesion of information relevant to an investigation, 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: PL: (Comments): "Any person" could set too wide scope of ACER powers in the light of the Agency obligations under REMIT. In the context of this article, ACER should have right to request information related only to the performance of the eventual duties under Article 13. In connection with Recital 22, it is not clear whether any request for information by the agency is in the course of a decision. From the Recital 22 it can be concluded that for legal persons it is only a "simple request" and for natural persons it is a decision. However, this is not clear from the provisions of Art. 13b.

Presidency compromise text	Drafting Suggestions Comments
	There is no need for ACER to step in about lack of fulfilling obligations set out in Article 4; this is something NRAs are well trained in and they are in a good position to deal with lack of inside information disclosure. Such proposal can be detrimental for the already well developed and functioning balance of power between ACER and NRAs. There is no need for Acer to pursue an investigation and request in relation to obligations set out in Article 15. That Article impose an obligation for PPATs to monitor orders to trade and transactions and notify potential breaches of Article 3 and 5 to ACER and national regulatory authority. Therefore it is not PPAT's actions, but the market participant's ones, that potentially could have affected with cross-border dimension the wholesale energy products. The mere issue, whether PPATs have in place adequate monitoring system and notify potential breaches is something that NRAs are in a good position to deal with.
(a) refer to this Article as the legal basis for the request;	ES: (Drafting): ~~(a) refer to this Article as the legal basis for the request;~~
(b) state the purpose of the request;	ES:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Drafting): ~~(b) state the purpose of the request;~~
(c) specify what information is required, and following which data format;	ES: (Drafting): ~~(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;	ES: (Drafting): ~~(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.	ES: (Drafting): ~~(e) inform the person that the reply to the request for information shall not be incorrect or misleading.~~

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	BG: (Drafting): For the purpose of information requests as referred to in paragraph 1, the Agency shall ~~have the power to~~ issue **a** decision~~s~~. 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. BG: (Comments): The proposed edition is to ensure legal clarity for the Market Participants. ES: (Drafting): ~~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~~

Presidency compromise text	Drafting Suggestions Comments
	~~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.~~ PL: (Drafting): 2. For the purpose of information requests as referred to in paragraph 1, the Agency shall ~~have the power to~~ issue a decision~~s~~. 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. PL: (Comments): The amendment aims to ensure legal clarity for market participants. The request for information must be considered as an act of direct and individual concern to the person concerned and as a challengeable act pursuant to Article 263 TFEU. Therefore it should take a form of an individual Agency decision, referred to in Article a point d Regulation 2019/942. In light of the limited scrutiny of the Court of Justice in relation to the complex economic and technical issues, such decision should also be subject to an appeal to Agency's Board of the Appeal.

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	ES: (Drafting): ~~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	CZ: (Comments): The link between the possibility to appeal to the interviewee under paragraph 2 and the obligation of the national regulatory authority to impose fines on persons who refuse to provide information under paragraph 4 should be better ensured. The text on the possibility to initiate enforcement by decision of the Agency once it finds a refusal to provide the requested information should be made clear that enforcement under paragraph 4 can only be initiated by a final decision ordering the entity to provide the information, not by initiating enforcement when "*the Agency*

Presidency compromise text	**Drafting Suggestions** **Comments**
ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition of penalties in accordance with applicable national law.	*find that a person refuses to supply the information requested*". ES: (Drafting): ~~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.	ES: (Drafting): ~~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.~~

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	BG: (Drafting): 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. ES: (Drafting): ~~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.~~ PL: (Drafting): 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. PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): The amedment aims to ensure legal clarity for market participants. The request for information must be considered as an act of direct and individual concern to the person concerned and as a challengeable act pursuant to Article 263 TFEU. Therefore it should take a form of a individual Agency decision, referred to in Article a point d Regulation 2019/942. In light of the limited scrutiny of the Court of Justice in relation to the complex economic and technical issues, such decision should also be subject to an appeal to Agency's Board of the Appeal.
Article 13c	ES: (Drafting): ~~Article 13c~~
Procedural guarantees	ES: (Drafting): ~~Procedural guarantees~~

Presidency compromise text	**Drafting Suggestions** **Comments**
1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:	CZ: (Drafting): 1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of the persons subject to the Agency's investigations ~~market participants~~, including CZ: (Comments): We propose to extend procedural guarantess generally to all persons affected by these ACER actions, not only in the recital 22). ES: (Drafting): ~~1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:~~

Presidency compromise text	Drafting Suggestions Comments
(a) the right not to make self-incriminating statements;	ES: (Drafting): ~~(a) the right not to make self-incriminating statements;~~
(b) the right to be assisted by a person of choice;	ES: (Drafting): ~~(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;	ES: (Drafting): ~~(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;	ES:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): ~~(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.	ES: (Drafting): ~~(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.	CZ: (Drafting): 2. The Agency shall seek evidence for and against the persons subject to the Agency's investigations ~~market participant~~, and carry out on-site inspections and request information CZ: (Comments): We propose to extend procedural guarantees generally to all persons affected by these ACER actions, not

Presidency compromise text	Drafting Suggestions Comments
	only in the recital 22). ES: (Drafting): ~~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.	ES: (Drafting): ~~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	ES: (Drafting): ~~Article 13d~~

Presidency compromise text	**Drafting Suggestions** **Comments**
Mutual assistance	ES: (Drafting): ~~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**.”;	ES: (Drafting): ~~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**.”;~~ PL: (Drafting): In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.

Presidency compromise text	Drafting Suggestions Comments
	PL: (Comments): It has to be highlighted that those new obligations imposed on NRAs, and other entities, could lead to a significant administrative burden.
[15] Article 15 is amended as follows:	HU: (Comments): We propose to not make market parties executing transactions in wholesale markets subject to carry out surveillance of breaches of article 3 and 5 of this regulation. This would be a significant barrier for new entry of market parties in the electricity market and will stifle competition over time. Moreover, PPATs cannot be responsible for identifying breaches of obligations they cannot verify. Since the amendment to the regulation provides for the obligation to report inside information (Art. 4) to ACER on the same terms as data on transactions and orders and fundamental data, monitoring of compliance with the obligation to publish inside information should remain at the level of ACER and NRAs. Lastly, REMIT allows for a delay in the publication of inside information in certain circumstances, which must be communicated to ACER and the NRA. The assessment of compliance with the requirements in this

Presidency compromise text	**Drafting Suggestions** **Comments**
	respect can therefore only be performed by the NRA/ACER. For TSOs specifically, the costs to perform surveillance of potential breaches to article 4 is not proportionate with the value thereof. The data will be disaggregated and TSOs will not naturally know where every data item relating to its control area is published; a market party in Spain can use an IIP in Spain to publish information relevant for trading on DK1-NL for example. Thus all IIPs would have to be monitored by all EU TSOs as well as ACER, which means more than 40 parties shall be required to do the same data collection and to some degree same monitoring. This task should be collected EU-wide entity. Furthermore, since breaches of article 4 is not relevant for the balancing market, which is the market TSOs are obliged to monitor. Market surveillance in the balancing market is well covered by article 3 and article 5.
"Article 15	
Obligations of persons professionally arranging or executing transactions	IE: (Drafting): Obligations of persons professionally arranging ~~or executing~~ transactions BG:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): Obligations of persons professionally arranging ~~or executing~~ transactions BG: (Comments): Please refer to the argumentation provided for: - Whereas (14) and Article 1 (8a) PL: (Drafting): Obligations of persons professionally arranging ~~or executing~~ transactions PL: (Comments): “Executing” is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for

Presidency compromise text	**Drafting Suggestions** **Comments**
	REMIT. HU: (Drafting): 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.	IE: (Drafting): 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. IE: (Comments): Ireland proposes to not make market parties executing transactions in wholesale markets subject to carry out surveillance of breaches of article 3 and 5 of this regulation. This would be a significant barrier for new entry of

Presidency compromise text	Drafting Suggestions Comments
	market parties in the electricity market and will stifle competition over time. Moreover, PPATs cannot be responsible for identifying breaches of obligations they cannot verify. Since the amendment to the regulation provides for the obligation to report inside information (Art. 4) to ACER on the same terms as data on transactions and orders and fundamental data, monitoring of compliance with the obligation to publish inside information should remain at the level of ACER and NRAs. REMIT allows for a delay in the publication of inside information in certain circumstances, which must be communicated to ACER and the NRA. The assessment of compliance with the requirements in this respect can therefore only be performed by the NRA/ACER. For TSOs specifically, the costs to perform surveillance of potential breaches to article 4 is not proportionate with the value thereof. The data will be disaggregated and TSOs will not naturally know where every data item relating to its control area is published; a market party in Spain can use an IIP in Spain to publish information relevant for trading on DK1-NL for example. Thus all IIPs would have to be monitored by all EU TSOs as well as ACER, which means more than 40 parties shall be required to do the same data collection and to some degree same monitoring. This task should be collected EU-wide entity. Furthermore, since breaches of article 4 is not relevant for the balancing market, which is the market TSOs are obliged to monitor. Market surveillance in the balancing market is well covered by article 3 and article 5.

Presidency compromise text	Drafting Suggestions Comments
	BG: (Drafting): 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. BG: (Comments): **The PPATs are not able to carry out surveillance and to be aware about all details related with their client MPs' publication behaviour.** **The PPATs do not have mechanisms to monitor the disclosure of inside information and the fulfilment of requirements of Article 4 of REMIT by their clients/MPs** because the MPs are free to publish inside information on whatever IIP and do not have obligation to inform their OMPs/brokers/PPAT where and whether they have disclosed inside information. PL:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): 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. PL: (Comments): "Executing" is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. This obligation should be related only to breaches of Article 3 or 5 for trades that are orderd and executed on the market venue operated by the relevant PPAT/OMP. PPAT could not investigate the obligations of market participants outside the system they monitor. For the above reasons, we believe that the reference to Article 4 in the second sentence of new Article 15 should be deleted. In the current wording of Article 15, according to the second sentence, PPAT is required to have and maintain arrangements and procedures to effectively identify insider trading and manipulation breaches. Adding the obligation to have mechanisms to identify

Presidency compromise text	Drafting Suggestions Comments
	breaches of the obligation to publish inside information goes beyond the obligations to identify suspicious orders and transactions mentioned in the first part of the sentence, and leads to the conclusion that the PPAT is to monitor the proper performance of the obligation to publish inside information by market participants, while its duty is to identify suspicious orders and transactions. Further explenation included in recital 14. HU: (Drafting): 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:	IE: (Drafting): Persons professionally arranging ~~or executing~~ transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

Presidency compromise text	**Drafting Suggestions** **Comments**
	BG: (Drafting): Persons professionally arranging ~~or executing~~ transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to: BG: (Comments): Please refer to the argumentation provided for: - Whereas (14) and Article 1 (8a) PL: (Drafting): Persons professionally arranging ~~or executing~~ transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to: PL:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): "Executing" is a term from the financial regulation which in the case of REMIT would make all MPs PPAETs, which in turn would be inappropriate, practically impossible to apply and therefore not effective for REMIT. HU: (Drafting): 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 ;	IE: (Drafting): (a) identify breaches of Article 3, 4 or 5 ; BG: (Drafting):

Presidency compromise text	Drafting Suggestions Comments
	identify potential breaches of Article 3~~, 4~~ or 5 ; BG: (Comments): **The PPATs are not able to carry out surveillance and to be aware about all details related with their client MPs' publication behaviour.** **The PPATs do not have mechanisms to monitor the disclosure of inside information and the fulfilment of requirements of Article 4 of REMIT by their clients/MPs** because the MPs are free to publish inside information on whatever IIP and do not have obligation to inform their OMPs/brokers/PPAT where and whether they have disclosed inside information. NL: (Drafting): identify **potential** breaches of Article 3, 4 (*deleted*) or 5, as well as Article 4 breaches on to their own IIP. NL: (Comments):

Presidency compromise text	**Drafting Suggestions** **Comments**
	Currently unclear if PPATs have to identify breaches of Article 4 regarding UMM publications on their own IIP, or regarding all inside information publications of all their members on all IIPs. The latter one does not seem feasible. PL: (Drafting): (a) identify **potential** breaches of Article 3, ~~4~~ or 5 ; PL: (Comments): We propose to delete article 4- explenation provided above and in recital 14. HU: (Drafting): (a) identify **potential** breaches of Article 3~~,~~ ~~4~~ or 5 ;
(b) guarantee that their employees	

Presidency compromise text	**Drafting Suggestions** **Comments**
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:	NL: (Drafting): NL would like to propose an amendment in Article 16(4) ***[no change proposed by Commission]*** d] Paragraph 4 is amended as follows: In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, or a report as referred to in Article 13(7) the Agency suspects or concludes that there has been a breach of this Regulation, it shall have the power: (a) to request one or more national regulatory authorities to supply any information related to the suspected breach;

Presidency compromise text	Drafting Suggestions Comments
	(b) to request one or more national regulatory authorities to commence or continue an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned; (c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which Member State the breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Member States in the investigatory group. NL: (Comments): Suggestion put here, as it is not allowed to add additional rows. If ACER carries out an investigation in accordance with Article 13, this should follow the procedure of Article 16(4)(b) after the report and the case file have been transferred to the relevant NRA. To allow the

Presidency compromise text	**Drafting Suggestions** **Comments**
	NRA to take responsibility for the investigation it should be able to continue the investigation if necessary to conclude whether a breach had taken place in accordance with it national procedural standards.
[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	

Presidency compromise text	**Drafting Suggestions** **Comments**
and relevant financial and competition law.”;	
[b] in paragraph 2, the following third subparagraph is added:	
~~*“No later than 30 days b*~~**B**efore 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**	LV: (Drafting): Before adopting a decision on a breach of this Regulation, national regulatory authorities 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 information that the national regulatory authorities have disclosed to the public as referred to in Article 18(3).~~

Presidency compromise text	Drafting Suggestions Comments
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*~~	LV: (Comments): The decision, which is taken by the institution after evaluating all the circumstances, becomes known only after its adoption, taking into account that additional evidence or circumstances in the case may be submitted up to the moment of adoption of the final decision. In view of the aforementioned, it is neither useful nor possible to presume its content before making the final decision. BG: (Drafting): Before adopting a decision on a breach of this Regulation, national regulatory authorities 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 information **in English language** **about the enforcement decisions** that the national regulatory authorities

Presidency compromise text	**Drafting Suggestions** **Comments**
~~*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.*~~";	have disclosed to the public as referred to in Article 18(3). BG: (Comments): It would be beneficial to the Market Participants to better understand the REMIT, if ACER establish and maintains full list of the ensofrcment decisions with details in English language on the relevant NRA decision. NL: (Comments): NL considers the new text as an improvement. ES: (Comments): ES agrees with the new text proposal (already proposed in REV2) in relation to the optionality of the communication of the summary (prior to the final decision) and the deletion of the seven days deadline to

Presidency compromise text	Drafting Suggestions Comments
	communicate the final decision. PL: (Drafting): ~~"No later than 30 days b~~**B**efore 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 may ~~shall~~ provide this decision to the Agency, including information on its date, the name of the legal persons sanctioned or employing natural persons sanctioned and acting on behalf of and for the benefit of the legal person, the name of the natural persons sanctioned running their own economic activity as a sole proprietorship, 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~~

Presidency compromise text	Drafting Suggestions Comments
	~~regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.~~ PL: (Comments): Poland proposes to amend this fragment. Proposed provision could lead to administrative burden and does not seem to provide many additional benefits therefore it should be on a more voluntary basis. Additionally it needs to be stressed that data submitted to the ACER should be protected under existing laws (such as GDPR etc.).
[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	

Presidency compromise text	Drafting Suggestions Comments
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**	ES: (Comments): As mentioned in recital 17, those competences granted to most NRAs under their respective national law, such us the enforcement, cannot be delegated to other NRA from a legal point view. That is the case for Spain, hence, there is no possibility for the Spanish NRA (CNMC) to delegate its tasks in other authority. However, we are not opposed to the inclusion of this article, as we understand that the delegation is granted at the discretion of the NRAs, remaining as a possibility and not as an obligation.

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	BG: (Drafting): 1. National regulatory authorities may, with the consent of the delegate **and only if it will not result in disproportionate administrative burden for market participants**, 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	

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	

Presidency compromise text	**Drafting Suggestions** **Comments**
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	BG: (Drafting): 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 **3, 4,** 4a, **5,** 8, **9** and 9a. BG: (Comments): The aim of the guidance is to ensure harmonized implementation and REMIT application by the NRAs.

Presidency compromise text	Drafting Suggestions Comments
9a.	NL: (Comments): NL considers the new text an improvement. ES: (Drafting): 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 and/or all market participants including issue non-binding recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles 4a, 8 and 9a. ES: (Comments): In the first part it was promptly added that Guidelines and recommendations are non-binding, however, it is still not precise for recommendations in this second part. Recommendations and guidelines are, by definition,

Presidency compromise text	Drafting Suggestions Comments
	non-binding and it is necessary to name them completely as so on each occasion in order to avoid a misunderstanding comparing different REMIT Articles.
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.	BG: (Drafting): The Agency shall, ~~where appropriate~~, conduct public consultations, **within an adequate and realistic timeframe**, regarding the guidelines and recommendations which it issues **and/or their updates,** 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. **The findings from the public consultations must be duly taken into account in the guidelines and recommendations.** BG: (Comments): The ACER Guidelines to the NRAs and MPs and their revisions sho**uld be always subject with proper public consultation process.**

Presidency compromise text	Drafting Suggestions Comments
	ACER **should be obliged** to consult with the market the guidance and the other implementation documentation that it issues related to application of REMIT. Considering that the guidance and the recommendations issued by ACER constitute a soft-low, they should be always consulted with the stakeholders. Those public consultations should not be treated as a formality by ACER and should give sufficient time to the stakeholders to express view. ACER must duly take into account the received feedback. PL: (Drafting): 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. PL: (Comments): If the guidance relates to MPs consultation should always be appropriate. Since the implementation of

Presidency compromise text	**Drafting Suggestions** **Comments**
	REMIT in 2011 there have been 6 ACER Guidance's issued and therefore it is neither too frequent nor too burdensome for the Agency to consult with MPs. MPs signalled that they expected introducing mandatory public consultation preceding major ACER decisions in the REMIT area, e.g. publication of guidelines (ACER REMIT Guidance). Using expression „where appropriate" does not make the consultation requirement obligatory and allows Agency to decide for MPs what is important and what is not. Proper public consultation should always be included when recommendations and guidelines are issued, and the Agency has always received valuable contributions from the Market when they issue public consultations.
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*~~	NL:

Presidency compromise text	**Drafting Suggestions** **Comments**
~~*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.*~~	(Comments): Improvement
~~*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*~~	NL: (Comments): Improvement

Presidency compromise text	**Drafting Suggestions** **Comments**
~~*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.*~~	NL: (Comments): Improvement
4~~*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:	

Presidency compromise text	**Drafting Suggestions** **Comments**
"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.";	NL: (Drafting): "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 **outside the authority that person works for** 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."; NL: (Comments): Paragraph 4 allows for NRAs and other authorities to use confidential information received under this regulation for the performance of their tasks and duties, however the possibilities to do so are very limited if persons working for those authorities can only share information within their organisation in summary or aggregate form.
[19] Article 18 is replaced by the following:	

Presidency compromise text	**Drafting Suggestions** **Comments**
"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.	PL: (Comments): General remark: Poland is of the opinion that sanctions should not be harmonized across member states and that Member States should still determine the acceptable level of fines. It should also be noted that the unification of the approach to administrative sanctions in EU countries will not eliminate the different treatment of entities violating the provisions of this regulation, due to different solutions used in individual EU countries in the field of criminal sanctions imposed by courts, different jurisdiction of criminal law, as well as a different definition of the crime of manipulation in the provisions of the e.g. Polish Penal Code and a different one in the REMIT regulation. For example, in the REMIT Regulation, market manipulation does not have to be intentional in order to be considered manipulation, while in Polish criminal law, the action of a given entity must be intentional in order to be subject to criminal sanctions. Therefore, even if the NRA submits a notification to the prosecutor's office based on the definition of manipulation contained in the REMIT regulation, the prosecutor or court will discontinue the case if it does not find the person's intentional action. Nevertheless if the fines are to be harmonized, the thresholds need to be lowered (specific comments included below).

Presidency compromise text	**Drafting Suggestions** **Comments**
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	

Presidency compromise text	Drafting Suggestions Comments
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	DK: (Comments): We thank the PCY for adding this to article 18, as it meets our concern regarding the Danish legal system.

Presidency compromise text	Drafting Suggestions Comments
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	DK: (Drafting): Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities or other competent national authorities, have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this

Presidency compromise text	**Drafting Suggestions** **Comments**
and administrative measures relating to breaches of the provisions of this Regulation:	Regulation: DK: (Comments): It shall be assured that it is the competent national authority (and national courts) cf. paragraph 1, who has the power to impose administrative sanctions. This paragraph 2 should not lead to confusion regarding whether or not national regulatory authorities should have the power to impose sanctions. It should be a competent national authority designated by MS, rather than the NRA.
(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;	

Presidency compromise text	**Drafting Suggestions** **Comments**
(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 **fines**~~*pecuniary sanctions*~~ of at least:	BG: (Drafting): in respect of legal persons, maximum administrative fines of ~~at least~~: BG: (Comments): the “maximum” and “at least” notions are contradicting to each other.

Presidency compromise text	**Drafting Suggestions** **Comments**
	PL: (Drafting): in respect of legal persons, maximum administrative **fines**~~*pecuniary sanctions* of at least~~ not exceeding: PL: (Comments): Maximum amount of the proposed sanctions may threaten the solvency of enterprises. The adequate value of maximum fines should be individually defined by each Member State, taking into account the development of national economy. However if they were to harmonize the threshold should be lowered.
i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;	DK: (Drafting): For breaches of Articles 3 and 5, a disgorgement of 100% of the profits gained and a fine of 200% of the profits gained; DK:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): The currently proposed fine of 15% of turnover creates bad incentives, as the potential fine is based on the size of the company (turnover). Our proposal of relating the fine to profits gained means that the potential fine is solely based on the level of the fraud and not the size of the company. The current draft reduces consequences for small trading companies, while larger companies with a wider range of activities besides trading face larger consequences. The current draft could also lead to companies committing fraud for i.e. 30 % of their yearly turnover, but the fine would be limited to 15 %. This could create an incentive to market manipulation and insider trading. BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply.

Presidency compromise text	**Drafting Suggestions** **Comments**
ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply.
iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply. HU: (Comments): The order book sharing is regulated under Article 8. We do not support the imposition of fines in the event that we cannot fulfill the obligation to share the order book. It has caused already a lot of investments to NEMOs, and cause high monthly costs for data which ACER anyway receives from the market participants,

Presidency compromise text	**Drafting Suggestions** **Comments**
	and therefore ACER could also generate the same data set. Even so, ACER has obliged NEMOs to provide the orderbook, and now NEMOs will face with fines.
in respect of natural persons, maximum administrative **fines**~~*pecuniary sanctions*~~ of at least:	BG: (Drafting): in respect of natural persons, maximum administrative **fine** ~~of at least~~: BG: (Comments): the "maximum" and "at least" notions are contradicting to each other. PL: (Drafting): in respect of natural persons, maximum administrative **fines**~~pecuniary sanctions of at least~~ **not exeeding**:

Presidency compromise text	**Drafting Suggestions** **Comments**
i. for breaches of Articles 3 and 5, EUR 5 000 000;	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply.
ii. for breaches of Article 4 and 15, EUR 1 000 000;	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply.
iii. for breaches of Article 8 and 9, EUR 500 000.	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply.

Presidency compromise text	**Drafting Suggestions** **Comments**
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.	BG: (Comments): The level of the sanctions could discourage the MPs from acting on the wholesale energy market in the Union and may have negative effect on the competition, market liquidity and security of supply. PL: (Drafting): Notwithstanding paragraphs (e), the amount of the fine shall not exceed ~~20~~ **15**% 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~~ **15**% 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	

Presidency compromise text	Drafting Suggestions Comments
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	

Presidency compromise text	Drafting Suggestions Comments
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	

Presidency compromise text	Drafting Suggestions Comments
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	

Presidency compromise text	Drafting Suggestions Comments
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.	
	ES:

Presidency compromise text	Drafting Suggestions Comments
	(Drafting): [19a] A new Article 19a is added: **1. In all the areas referred to in this Regulation where the Commission is empowered to adopt delegated acts in accordance with Article 20 or implementing acts in accordance with the examination procedure referred to in Article 21(2), the Agency may, on its own initiative or by request of the Commission, submit proposals to the Commission for such draft acts, or amendments to already adopted acts, and recommend their adoption.** **2. Before submitting a draft act, or an amendment to an adopted act, to the Commission, the Agency shall consult all relevant stakeholders in accordance with Article 14 of Regulation (EU) 2019/942.** **3. Within a reasonable period not exceeding six months of receipt from the Agency of a draft act, or an amendment to an adopted act, the Commission shall decide whether to adopt it. The Commission may adopt the draft act in part only, or with amendments, where the Union's interests so require.** **4. Where the Commission intends not to adopt a draft act, or an amendment to an adopted act, or intends to adopt it in part or with amendments, it shall send it back to the Agency explaining why it does not intend to adopt it or explaining the reasons for its amendments.**

Presidency compromise text	Drafting Suggestions Comments
	5. Within a period of six weeks, the Agency may amend the draft act on the basis of the Commission's proposal or explanations and resubmit it to the Commission for its consideration within a period of six additional weeks. **6. When the Commission decides to adopt a draft act, or amendment to an adopted act, submitted to it by the Agency, it shall follow the standard procedures referred to in Articles 20 and 21(2) of this Regulation.** ES: (Comments): The elaboration of delegated and implementing acts requires assistance of technical expertise in a form which is specific to the wholesale energy market. As a body with highly specialised expertise, it is efficient and appropriate to entrust the Agency, in technical areas defined by Union law, with the elaboration of draft delegated and implementing acts, which do not involve policy choices.
Article 2	
Amendments to Regulation (EU) 2019/942	

Presidency compromise text	**Drafting Suggestions** **Comments**
Regulation (EU) 2019/942 is amended as follows:	
~~[1] in Article 6, paragraph 8 is deleted.~~.	BG: (Drafting): ~~[1] in Article 6, paragraph 8 is deleted.~~ BG: (Comments): The NRAs could be able to request assistance from ACER regarding the investigations pursuant to REMIT. ES: (Drafting): ~~[1] in Article 6, paragraph 8 is deleted.~~ ES:

Presidency compromise text	**Drafting Suggestions** **Comments**
	(Comments): Current Article 6(8) of ACER regulation states that "*Upon the request of a regulatory authority, ACER may provide operational assistance to that regulatory authority regarding investigations pursuant to Regulation (EU) No 1227/2011*." It is surprising to delete this Article while it was introduced to help NRAs wich have no enough sources or experience for conducting investigations. This is not consistent with regard to the willing to grant ACER with investigatory power itself. Furthermore, the reinforcement of the cooperation between ACER and NRAs in cross-border cases could be precise through this provision.
[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**"**.	DK: (Drafting): "(c) Pursue and coordinate investigations pursuant to Articles 13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011, while taking into consideration national regulatory authorities ability and willingness to conduct their own investigations".

Presidency compromise text	Drafting Suggestions Comments
	DK: (Comments): In some MS, there is already a well-functioning cooperation between the NRA and the national investigative police authorities. This cooperation should not be hindered, when it provides the necessary actions in pursuing investigations subject to this provision. BG: (Drafting): **"**(c) Pursue and coordinate investigations pursuant to ~~Articles 13, 13a, 13b and~~ Article 16 of Regulation (EU) No 1227/2011**"**. BG: (Comments): **Our position is that Recitals (19) to (22) and the new Articles 13(3) – 13(7), 13a, 13b, 13c, 13d should be deleted.** The new ACER supervisory and enforcement powers, envisaged in Article 13(3) – 13(7), 13a, 13b, 13c, 13d are not in line the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the

Presidency compromise text	Drafting Suggestions Comments
	European Union and distroy the balance of powers between the European and National regulatory bodies set by the Third Energy Package. The NRAs are well in a position and should remain solely responsible for the supervision and enforcement of the REMIT prohibitions for insider trading (Article 3) and market manipulation (Article 5), and for the obligations for inside information disclosure (Article 4).
[2a] in Article 12 the following point (d) is inserted:	
"(d) authorise and supervise IIPs and RRMs pursuant to Articles 4a and 9a of Regulation (EU) No 1227/2011."	
[3] in Article 32, paragraph 1 is replaced by the following:	

Presidency compromise text	**Drafting Suggestions** **Comments**
"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	BG: (Drafting): "1. Fees shall be due to the Agency 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~~ **T**he costs of the Agency for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011." **shall be covered by the general ACER bugdet.** ALTERNATIVELY, in case of deletion of Article 13 (3) to (7), Article 13a - 13d: "1. Fees shall be due to the Agency 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.~~

Presidency compromise text	Drafting Suggestions Comments
1227/2011.”.	~~Revenues from those fees may also cover the costs of the Agency for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.”~~ BG: (Comments): **The costs of ACER for exercising the eventual supervision, investigation and enforcement powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 shall not be covered by increased REMIT fees for transaction data reporting or by the introduction of new fees for inside information collection.** **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 shall be covered by the general ACER budget.** **The collection of inside information by ACER should NOT be included in the REMIT fee regime because otherwise this will have detrimental effect on the market transparency.**

Presidency compromise text	Drafting Suggestions Comments
	The disclosure of inside information is made and meant for the use by the market. **The inside information provision, via special channel to ACER is an auxiliary process** – facilitating ACER and ACER's ex-post monitoring and surveillance activities. ACER collects inside information in order to detect eventual occasions of breaches of Article 3 of Regulation (EU) No 1227/2011. The disclosed inside information is publicly available and its monitoring could be done without special data collection. Furthermore, the disclosed inside information by nature is fundamental data (information about capacity, use of capacity, capacity limitations). As per Commission Decision 2020/2152, the collection of fundamental data is not subject for REMIT fees. The eventual inclusion of the inside information disclosure under REMIT fees regime may have detrimental effect on the market transparency. Due to the lack of clear thresholds for defining which information is really significant for the market, to be "on the safe side", the market participants currently publish more details about more occasions of capacity limitations. It is a matter of decision and organization at the stakeholders' side how to use and filter the published data that they deem valuable. If the inside information data collection is included in the REMIT fee regime, this may limit the scope of the published data which may have negative effect for the market.

Presidency compromise text	Drafting Suggestions Comments
	Taking into account that the collection of the disclosed inside information is to ease the work of ACER and the NRAs, and considering that by nature the disclosed inside information is fundamental data, the collection of inside information should be excluded from REMIT fees regime or at least should be treated as "fundamental data" in the context of the application of the REMIT fees (the individual UMM data transmissions to ACER should not be charged). Moreover, the entities that have both: (1) transparency obligations - to publish interruptions data and information about the capacity, its use and/or limitations of capacity; and (2) obligations to disclose inside information about the same events; **should not be double charged for providing several times one and the same information to ACER via different channels - based on different REMIT provisions.** The revision of Article 32, paragraph 1 suggests that ACER costs for exercising the activities under Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 shall be covered by the fees collected by the RRMs and the IIPs. As of 2020, the current ACER REMIT activities are covered by the fees collected from the RRMs 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.

Presidency compromise text	Drafting Suggestions Comments
	This would mean that, as per the new revision of Article 32 of Regulation (EU) 2019/942, ACER's costs for executing the extended power in line with Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 will be covered by the fees eventually paid for inside information data collection. The main market actors, disclosing inside information are (the major volume of inside information is published by) the TSOs and the generation units. This would mean that the main financial burden for covering ACER costs for fulfilling Articles 13, 13a, 13b and Article 16 of Regulation (EU) No 1227/2011 will be paid by the TSOs and the generation units (which may not invoked those costs). It must be considered, that those parties have obligations to publish information for the same capacity limitations also under the respective Transparency regulations. This transparency (interruptions) data is reported by ENTSOs to ACER and fees for this reporting is paid by the ENTSOs (through the TSOs, generation units) to ACER. This would mean that the same entities will pay twice for publication and collection of equal information and will be the main funders of ACER costs for performing Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011. This makes the suggested revision of Article 32 (1) of Regulation (EU) 2019/942 highly disproportionate. Having regard to the above, we are proposing: 1. To NOT include the inside information disclosure and collection in the REMIT fee regime.

Presidency compromise text	Drafting Suggestions Comments
	To envisage ACER costs for executing the duties under Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011 to be covered by the general ACER budget PL: (Drafting): "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 and costs of National Regulatory Authorities to conduct additional tasks included in the Regulation (EU) No 1227/2011. PL: (Comments): Information disclosed in the UMM is already reported in other ways, and therefore, in order to comply with

Presidency compromise text	Drafting Suggestions Comments
	the principle of cost reduction for Market Participants and to avoid double payments, information disclosed as UMM should not be subject to fees. In addition, it is not advisable for IIPs to be charged for audits, guidelines as recommendations after the REMIT reporting system has been implemented in accordance with Article 8 of REMIT. We also propose that NRA's are given additional funds to enable them proper fulfillment of all new tasks steaming from REMIT Regulation.
~~Article 3~~	PL: (Drafting): Article 3
~~*Amendments to Commission Implementing Regulation (EU) No 1348/2014*~~	BG: (Drafting): Amendments to Commission Implementing Regulation (EU) No 1348/2014

Presidency compromise text	Drafting Suggestions Comments
	ES: (Comments): This article should remain here (see comments on article 7d of REMIT). PL: (Drafting): Amendments to Commission Implementing Regulation (EU) No 1348/2014
	BG: (Drafting): Proposal for amendment of Article 3(1)(b)(i), (ii) List of reportable contracts 1.The following contracts shall be reported to the Agency: (b) Wholesale energy products in relation to the transportation of electricity or natural gas in the Union:

Presidency compromise text	Drafting Suggestions Comments
	(i) Contracts relating to the transportation of electricity or natural gas in the Union between two or more ~~locations~~ **balancing zones** or bidding zones concluded as a result of a primary explicit capacity allocation by or on behalf of the TSO, specifying physical or financial capacity rights or obligations, (ii) Contracts relating to the transportation of electricity or natural gas in the Union between two or more ~~locations~~ **balancing zones** or bidding zones concluded between market participants on secondary markets, specifying physical or financial capacity rights or obligations, including resale and transfer of such contracts, BG: (Comments): Argumentation for the proposed amendment Proposal for revision of Article 3(1) (b) (i) and (ii) of Regulation (EU) No 1348/2014 The term "location" has no definition. The requirement for reporting of contracts relating to the transportation of electricity is clearly defined by specifying that details of contracts for *"transportation of electricity in the Union* ***between two or more bidding zones"*** should be reported. **The analogous (to the bidding zone) term for the gas market (namely "balancing zone") should be used**

Presidency compromise text	Drafting Suggestions Comments
	regarding the contracts to be reported relating to the *transportation of natural gas* in the Union, namely: it shall be specified that details of contracts for *"transportation of natural gas in the Union between two or more* ***balancing zones****"*.
~~*Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:*~~	PL: (Drafting): Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:
	BG: (Drafting): Proposal for amendment *Article 7 (5)* Details of **standard** contracts referred to in Article 3(1)(b)(i) shall be reported as soon as possible but no later than on the working day following the availability of the allocation results. Any modification or the termination of the concluded **standard** contracts shall be reported as soon as possible but no later than on the

Presidency compromise text	Drafting Suggestions Comments
	working day following the modification or termination. **Details of non-standard contracts referred to in Article 3(1)(b)(i) shall be reported no later than one month following the conclusion, modification or termination of the contract.** BG: (Comments): Argumentation for the proposed amendment Proposal for revision of Article 7(5) of Regulation (EU) No 1348/2014 Regulation (EU) No 1348/2014 acknowledge that the contracts related to wholesale energy products could be "standard" (Artlicle 2(2) of Regulation (EU) No 1348/2014) and "non-standard" (Article 2(3) of Regulation (EU) No 1348/2014). Article 5(1) (d) of Regulation (EU) No 1348/2014 admits that with regards to the transportation of electricity or natural gas the contracts could be both "standard" and "non-standard". Article 7 of Regulation (EU) No 1348/2014 regarding the timing of the reporting of transactions, specifies different timeline for reporting of the "**standard contracts for supply**" and the "**non-standard contracts for supply**", respectively – one working day (Article 7(1)), following the "standard" transaction and one

Presidency compromise text	Drafting Suggestions Comments
	month (Article 7(4)), following the "non-standard" transaction. However, the provisions of Article 7 of Regulation (EU) No 1348/2014, do not envisage different deadlines for reporting of the details for "**standard contracts for transportation**" and the "**non-standard contracts for transportation**". The "non-standard contracts for transportation" are complex (paper-based) contracts and it is not feasible to be reported, neither organizationally, nor technically, within one working day after their signing. Our proposal for amendment of Article 7(5) of Regulation (EU) No 1348/2014, suggests to apply the same approach regarding the timeline for reporting of standard and non-standard contracts for supply – also for the standard and non-standard contracts for transportation: - "standard contracts for transportation" to be reported as soon as possible but no later than on the working day following the availability of the allocation results; "non-standard contracts for transportation" to be reported no later than one month following the conclusion, modification or termination of the contract.
~~*[1] Article 7a is added:*~~	
~~*"Article 7a*~~	

Presidency compromise text	Drafting Suggestions Comments
~~*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;*~~	

Presidency compromise text	Drafting Suggestions Comments
~~*(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.*~~	

Presidency compromise text	Drafting Suggestions Comments
~~*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;*~~	

Presidency compromise text	Drafting Suggestions Comments
~~*(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*~~	

Presidency compromise text	**Drafting Suggestions** **Comments**
~~*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 **3**~~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.	

Presidency compromise text	Drafting Suggestions Comments
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.	BG: (Drafting): Articles 4a, 9a and 8(1a) shall apply with effect from ~~six~~ **18** months after the date on which the Commission adopts the relevant implementing acts referred to in those Articles. BG: (Comments): The proposal for revision of REMIt does not cover the question with he status of the currently registered by ACER RRMs and IIPs. If those entities should pass a new authorization process, this cannot happen within 6 months. The shortest periods for registioon of an RRM is 6 months. The authorization of an IIP takes around an year. NL: (Comments): NL would like to see substantiated what the reasoning is behind the proposal for the 6 month period, which seems quite challenging from the practical level.

Presidency compromise text	**Drafting Suggestions** **Comments**
	PL: (Drafting): **Articles 1(3), 4a, 5a(2), 8(1a), 9(1), 9a, 10(1a), 13d(1) and 18(2) and shall apply with effect from six months after the date on which the Commission adopts the relevant implementing acts referred to in those Articles.** PL: (Comments): There are move provisions that require longer implementation.
This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Strasbourg,	
For the European Parliament For the	

COMMENTS FROM: LV CZ IE DK IT BG NL ES LT PL HU

Presidency compromise text	**Drafting Suggestions** **Comments**
Council	
The President The President	
	End