

Wholesale energy market integrity and transparency

2010/0363(COD) - 08/12/2010 - Legislative proposal

PURPOSE: to provide a harmonised framework to ensure energy market transparency and integrity.

PROPOSED ACT: Regulation of the European Parliament and of the Council.

BACKGROUND: it is important to ensure that **consumers can have confidence in the integrity of electricity and gas markets** and that prices set on wholesale energy markets reflect a fair interplay between supply and demand. Unless effectively addressed, the potential for unfair trading practice undermines public trust, deters investment, increases volatility of energy prices and may lead to higher energy prices in general.

To date energy market monitoring practices have been Member State and sector specific. Depending on the overall market framework and regulatory situation, this can result in trading activities being subject to multiple jurisdictions with monitoring carried out by several different authorities, possibly located in different Member States. This can result in a lack of clarity as to where responsibility rests and even to a situation where no such monitoring exists.

Energy markets are increasingly interlinked across the Union. Market abuse in one Member State affects wholesale prices for electricity and gas across national borders. Therefore **the concern to ensure the integrity of markets cannot be a matter only for individual Member States.**

In December 2007, the Commission requested the advice of Committee of European Securities Regulators (CESR) and the European Regulators Group for Electricity and Gas (ERGEG) on issues relating to wholesale energy market transparency and market abuse.

In their recommendation, they confirmed that the scope of existing legislation may not properly address market integrity issues on the electricity and gas markets and recommended the **consideration of an appropriate legislative framework in the energy sector, preventing market abuse.**

IMPACT ASSESSMENT: this proposal is accompanied by an Impact Assessment which examines the options for ensuring energy market integrity and transparency in detail.

LEGAL BASE: Article 194(2) of the Treaty on the Functioning of the European Union (TFEU). This Article states that in the context of the establishment and functioning of the internal market Union policy on energy shall aim, inter alia, to ensure the functioning of the energy market.

CONTENT: as a result the gaps identified by CESR and ERGEG, the main elements of the proposed Regulation are as follows:

Clear and consistent rules: the Regulation develops rules which clearly prohibit market abuse on wholesale markets in electricity and related products, and wholesale markets in natural gas and related products. These rules include clear prohibitions on trading on insider information, and market manipulation. These rules are formulated in such a way that they are consistent with the Market Abuse Directive, and do not apply to financial instruments which are already covered by that Directive.

Adaptable and compatible rules: the **Regulation allows these rules to be specified in delegated acts of the Commission.**

Industry responses to the public consultation favoured this approach, which allows the specificities of energy markets, which are subject to change, to be taken into account.

Measures for effective detection and deterrence:

- **Market monitoring:** to detect market abuse an effectively functioning market monitor with timely access to complete transactional data is necessary. EU level market monitoring can take the holistic view needed for the monitoring of energy markets. The Agency for the Cooperation of Energy Regulators has the necessary expertise in energy markets, and institutional connections with national energy regulators for this role.

The Regulation provides for the Agency to gather, review and share data from wholesale energy markets. Member State authorities, including national regulatory authorities, financial regulators and competition authorities, have a direct interest in the market results and bring a vital understanding of the markets in their jurisdiction. Therefore cooperation between the Agency and national authorities is central to the monitoring foreseen.

- **Data Reporting:** the Regulation requires market participants to provide the Agency with a record of their transactions in wholesale energy products. The form, content and timing of the information to be provided will be laid down in delegated acts of the Commission. These will be based on draft guidelines developed by the Agency. These guidelines will provide for several channels for the reporting of data. This will minimise the burden on market participants and avoid double reporting obligations on entities covered by the Market Abuse Directive.

- **Investigation and Enforcement:** market monitoring will be accompanied by effective investigation where market abuse is suspected, where necessary leading to appropriate sanctions. The Regulation gives national regulatory authorities the lead role in this, requiring Member States to grant them the necessary powers to investigate suspected market abuse and to lay down appropriate rules on the penalties applicable in case of violations of the Regulation. The Regulation also recognises that the cross border nature of energy markets means that cooperation will be crucial. In this ACER is given an important role. In close contact with energy regulators and financial supervisors it will ensure that a consistent approach is taken to suspected market abuse, alerting national regulatory authorities to potential market abuse and facilitating information exchange.

This coordination role will be particularly important when an investigation covers several Member States or it is unclear where the suspected market abuse actually occurred. The Regulation provides for the possibility for an investigatory group to be established, coordinated by the Agency but made up of representatives of concerned national regulatory authorities.

BUDGETARY IMPLICATION: the total appropriations to cover the new tasks of the Agency for the Cooperation of Energy Regulators is estimated at **EUR 1.315 million in 2012 and EUR 1.613 in 2013.** These amounts cover the equipment, operating costs, mission expenditure for the new task and human resources.