

# Wholesale energy market integrity and transparency

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The Committee on Industry, Research and Energy adopted the report by Jorgo CHATZIMARKAKIS (ADLE, DE) on the proposal for a regulation of the European Parliament and of the Council on energy market integrity and transparency.

The committee recommends that the European Parliament's position adopted at first reading should amend the Commission's proposal. The proposed amendments are the result of negotiations between the members of the committee and Member States' representatives. It may be summarised as follows:

**Subject matter and scope:** the amended text stipulates that the rules must be coherent with those applying in financial markets and with the proper functioning of the energy markets thereby taking into account the specific characteristics of these markets. The Regulation provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators (ACRE) in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

ACRE should ensure that the application of this Regulation is done in a coordinated way across the Union, and is coherent with the application of Directive 2003/6/EC. To this effect, ACRE must publish non-binding guidance on the application of the definitions set out in the Regulation. This guidance should address the issue of accepted market practices. It should also be able to request cooperation, and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities, and where appropriate, other authorities including national competition authorities.

The Director of ACRE shall consult the Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions. The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under the Regulation. market manipulation" means:

**Manipulations of wholesale energy markets:** this involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability, production, storage or transportation capacity and demand. The text sets out the different forms of such market manipulation which include: placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media including the internet, or by any other means.

**Examples of market manipulation** and attempts to manipulate the market include: (i) conduct by a person or persons acting in collaboration, to secure a decisive position over the supply of or demand for a wholesale energy product; (ii) the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices.

**Wholesale energy products:** for the purposes of the Regulation, contracts for the supply and distribution of natural gas or electricity to final customers with a capacity to consume of more than 600 GWh per year of either electricity or gas shall be treated as wholesale energy products.

**Insider information:** the disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing

their profession and the rules governing the freedom of the press, unless: (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or (ii) when disclosure is made with the intention to mislead the market as to the supply of, demand for, or price of wholesale energy products.

The amended text provides also for the obligation to publish inside information. Such disclosure shall include information relevant to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities.

**Adaptations of the concepts of insider information and market abuse:** in order to ensure the necessary flexibility to respond quickly to developments, the power to adopt acts is delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy.

**Market monitoring:** national regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets. National regulatory authorities may also monitor trading activity in wholesale energy products at national level. Member States may provide for their national competition authority or a market monitoring body established at that authority to carry out market monitoring with the national regulatory authority.

The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report public. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency.

**Data collection:** market participants shall provide the Agency with certain information which shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information.

Market participants shall provide the Agency and national regulatory authorities with information related to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities, 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.

In order to ensure uniform conditions for the implementation of provisions on data collection, implementing powers are conferred on the Commission, to be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

**Registration of market participants:** a European register of market participants, based on national registers, will be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of this register, the Commission will assess in cooperation with the Agency the functioning and the usefulness of the European register of market participants. If deemed appropriate based on this assessment, the Commission will consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure an EU-wide level playing field for market participants.

**Data protection:** ACRE must ensure the operational security and protection of the data which it receives. ACRE should also ascertain that those authorities who have access to the data held by the Agency will be able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to freedom of expression and information recognised in the Charter.

**Right of appeal:** a new provision states that Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

**Penalties:** 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. The recitals state that the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate timeframe.