

Wholesale energy market integrity and transparency

2010/0363(COD) - 14/09/2011 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 616 votes to 26 with 24 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on energy market integrity and transparency.

Parliament adopted its position in first reading in accordance with the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amended the Commission proposal as follows:

Subject matter and scope: the Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It 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.

Role of the Agency: ACRE should ensure that the application of the 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. ACRE should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under the Regulation.

Manipulations of wholesale energy markets: the Regulation forbids behaviour which undermines the integrity of the energy market. The amended text stipulates that such manipulation on wholesale energy markets 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 of production, storage or transportation capacity, and demand. Forms of market manipulation 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;
- deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports;
- deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products.

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.

Insider information: the amended text provides 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.

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.

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 ACRE 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.

ACRE 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 ACRE 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.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

Data collection: market participants shall provide ACRE 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 ACRE 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.