

Wholesale energy market integrity and transparency

2010/0363(COD) - 25/10/2011 - Final act

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

LEGISLATIVE ACT: Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

CONTENT: following an agreement in first reading with the European Parliament, the Council adopted a regulation on wholesale energy market integrity and transparency.

As the EU internal energy market for electricity and gas is becoming more and more liberalised and interconnected, the potential for its abuse and manipulation is also growing.

The new Regulation **sets up a framework for monitoring wholesale energy markets** in order to detect and deter market abuse and manipulation effectively, and thus ensure the integrity and transparency of the market. The central element of this framework is the establishment of a market monitoring function at European level, a task which will be carried out by the **Agency for the Cooperation of Energy Regulators (ACER)**.

Role of the Agency: the ACER will monitor trading activity in wholesale energy products in close collaboration with national regulatory authorities. It will collect the data needed to assess and monitor wholesale energy markets. The ACER will establish **a European register of market participants** based on the information provided by national regulatory authorities.

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 publicly available. 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.

Insider dealing and market manipulation: the new rules **prohibit** insider trading and market manipulation and establish provisions on an **obligation to publish** inside information. 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.

Insider information: the new rules include 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.

Penalties: Member States must impose penalties applicable to infringements of this regulation, which must be proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

ENTRY INTO FORCE: 28/12/2011.

DELEGATED ACTS: the Commission has the power to adopt delegated acts in respect of technical updating of the definitions of inside information and market manipulation. The power to adopt delegated acts is conferred on the Commission for a period of 5 years from 28 December 2011 (tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension.) A delegated act adopted shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act (extended by 2 months at the initiative of the European Parliament or the Council.)