

Wholesale energy market: Union's protection against market manipulation

2023/0076(COD) - 08/09/2023 - Committee report tabled for plenary, 1st reading/single reading

The Committee on Industry, Research and Energy adopted the report by Maria da Graça CARVALHO (EPP, PT) on proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market.

The committee responsible recommended that the European Parliament's position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Sensitive data

The report noted that where information is not, or is no longer, sensitive from a commercial point of view, the Agency should be able to make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements, with a view to contributing to enhanced market knowledge. This is intended to help to build confidence in the market and to foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make the information available for scientific and transparency purposes in a fair and transparent manner.

Registered Reporting Mechanisms (RRMs)

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 RRM should be authorised by the Agency. The RRM should at all times comply with the conditions for authorisation and data protection law. The Agency should also establish a **register** of all RRM in the Union. The Agency should have the power to withdraw such authorisation in certain cases. The Agency's supervisory powers over RRM should be extended to include the power to impose fines and periodic penalty payments and to issue public notices.

Price assessments and benchmarks

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 relevant LNG market data that are necessary to establish a daily LNG price assessment and benchmark. The price assessment and benchmark should be undertaken based on all transactions pertaining to relevant LNG deliveries into the Union. The Agency should be empowered to collect this market data from all participants active in LNG deliveries into the Union.

The Agency should minimise the burden imposed on LNG market participants by optimising the collection process of the relevant data through the existing sources and reporting mechanisms in place under Regulation (EU) No 1227/2011. Where the Agency finds that an LNG market participant has not submitted the required information, it should be able to impose fines or periodic penalty payments.

Investigation of breaches

The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. 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, including by appointing an **independent investigating officer** within the Agency with powers to conduct on-site inspections, request information and conduct interviews.

Penalties

A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Member States should provide for effective, proportionate and dissuasive criminal penalties, considering that they are an effective tool in the financial sector. Administrative penalties, 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, which should be provided with the appropriate financial, human and technical resources in order to adequately fulfil their tasks.

By 1 June 2025, the Commission should assess the effectiveness of introducing criminal penalties by Member States for intentional and serious cases of market abuse in the Union wholesale energy markets and should submit a report to the European Parliament and to the Council.

To fulfil the new obligations assigned to it, in particular those relating to enhanced investigatory and sanctioning powers in cross-border cases, the Agency should have adequate staff and the ability to hire additional personnel, if necessary.

Report and review

The amended text stated that by 1 June 2027, and every five years thereafter, the Commission, in consultation with relevant stakeholders, should assess the application of this Regulation, in particular as regards its impact on **market behaviour**, market participants, liquidity, reporting requirements, including on LNG market data and the level of administrative burden for market participants, including the potential barriers to entry for new market participants, as well as the Agency's performance in relation to its objectives, mandate and tasks.

Based on those assessments, the Commission should draw up a report and submit it without undue delay to the European Parliament and to the Council. The report should be accompanied, where appropriate, by a legislative proposal.