Wholesale energy market: Union’s protection against market manipulation

2023/0076(COD) - 29/02/2024 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by 440 votes to 32, with 31 abstentions, a legislative resolution on the 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 proposed Regulation introduces new measures to better protect the EU wholesale energy market and better protect the energy bills of European businesses and households from potential short-term market price fluctuations. It amends Regulation (EU) No 1227/2011 in order to ensure more transparency and increase monitoring capabilities, thereby contributing to the stabilisation of energy prices and the protection of consumers, and to ensure more effective investigation and enforcement of potential cross-border market abuse cases by addressing shortcomings identified in the current framework.

The European Parliament's position adopted at first reading under the ordinary legislative procedure amends the Commission's proposal as follows:

Information made available to market players

Where information shared with the European Agency for the Cooperation of Energy Regulators is not, or is no longer, sensitive from a commercial or security point of view, the Agency should be able to make that information available to market participants and to the wider public in an accessible manner with a view to contributing to enhanced knowledge about the wholesale energy markets. This should include the possibility for the Agency to publish aggregated information on organised marketplaces (OMPs), inside information platforms (IIPs) and registered reporting mechanisms (RRMs) in accordance with applicable data protection law with the aim of improving transparency of wholesale energy markets and provided that it does not distort competition on those energy markets.

Authorisation and supervision of inside information platforms (IIPs) and registered reporting mechanisms (RRMs)

An IIP should operate only after the Agency has assessed whether that IIP complies with the requirements set out in the Regulation and has authorised its operation. The Agency should establish a register of IIPs which it has authorised. The register of IIPs should be publicly available and should contain information on the services for which the IIP is authorised. The Regulation specifies the elements that must be included in inside information made public by a IIP.

An IIP whose authorisation has been withdrawn by the Agency should inform all relevant market participants and should ensure orderly substitution including the transfer of data to other IIPs, chosen by market participants, and the redirection of reporting flows to other IIPs.

The operation of an RRM should be subject to prior authorisation by the Agency. The Agency should authorise an entity to operate as an RRM within a reasonable period of time and, to the extent possible, within three months of the receipt of the complete application.

Tasks and powers of the Agency with regard to LNG price assessments and LNG benchmarks

The Agency should produce and publish a daily LNG price assessment and a daily LNG benchmark. LNG market participants should submit daily to the Agency the LNG market data, free of charge, by means of the reporting channels established by the Agency, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET). A provision on the quality of LNG market data has been introduced.

Market participants, or a person or an entity acting on their behalf, should provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported should 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 intermediate or final beneficiaries of the transaction and any other relevant information.

Reference centre

By 12 months from the date of entry into force of this amending Regulation, the Agency should develop a reference centre containing information on Union wholesale energy market data. The Agency should make public, by means of the Reference Centre, parts of the information which it possesses, provided that commercially sensitive information on individual market participants, individual transactions or individual marketplaces are not disclosed and cannot be identified from the information made public.

On-site inspections by the Agency

The Agency should prepare and conduct on-site inspections in close cooperation and in coordination with the relevant authorities of the Member State concerned. It may conduct all necessary on-site inspections at the premises of the persons subject to the investigation where business records could be kept. It may by decision carry out an on-site inspection in private premises of directors.

Request for information

At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations. The Agency may interview and take statements from any person who consents to being interviewed for the purpose of collecting information relating to the subject-matter of an investigation. The Agency may record the answers.

Periodic penalty payments

Under the amended Regulation, the Agency should, by means of a decision, impose a periodic penalty payment in respect of a person subject to an investigation in order to compel that person to submit to an on-site inspection ordered by a decision or to supply the information requested by a decision. Periodic penalty payments should be effective and proportionate. To that effect, the amount of a periodic penalty payment should be, in the case of legal persons, 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. A periodic penalty payment may be imposed for a period of no more than six months from the notification of the Agency's decision.

Report and review

By 1 June 2027, and every five years thereafter, the Commission should, after consulting relevant stakeholders, 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.

On the basis of those assessments, the Commission should draw up a report and submit it without undue delay to the European Parliament and to the Council. Those reports should be accompanied, where appropriate, by legislative proposals.