

Wholesale energy market: Union's protection against market manipulation

2023/0076(COD) - 17/04/2024 - Final act

PURPOSE: to improve the Union's protection against market manipulation on the wholesale energy market.

LEGISLATIVE ACT: Regulation (EU) 2024/1106 of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market.

CONTENT: in order to enhance the public's trust in functioning wholesale energy markets and to protect the Union effectively against market abuse, this regulation amending Regulation (EU) No 1227/2011 ensures further transparency and increases monitoring capacities, thereby contributing to the stabilisation of energy prices and consumer protection, as well as to ensure more effective investigation and enforcement of cases of potential cross-border market abuse addressing the shortcomings identified in the current framework.

Market manipulation

For example, the following will be considered as market manipulation:

- entering into any transaction, or issuing, modifying or withdrawing any order to trade or engaging in any other behaviour relating to wholesale energy products which gives, or is likely to give, **false or misleading signals** as to the supply of, demand for, or price of wholesale energy products;
- disseminating **information through the media**, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
- transmitting false or misleading information or providing false or misleading input in relation to a **benchmark** where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading.

Authorisation and supervision of inside information platforms (IIP)

An IIP will operate only after the Agency has assessed whether that IIP complies with the requirements and has authorised its operations. An IIP will have adequate policies and arrangements in place to make public the required inside information as close to real time as is technically possible, on a reasonable commercial basis. The inside information will be made available and easily accessible for all purposes free of charge, including through a website or an application programming interface. The IIP will efficiently and consistently disseminate such information in a manner that ensures prompt access to the inside information, on a non-discriminatory basis.

A market participant that engages in **algorithmic trading** will put place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or otherwise function in a way that may create or contribute to a disorderly market.

The operation of a **Registered Reporting Mechanism** (RRM) will also be subject to prior approval by ACER. ACER will issue an approval as RRM to parties when the RRM is established in the Union.

Market players established or resident in a third country

Where a market participant that is not resident or established in the Union is active within the Union, it should designate a **representative in the Union**. The representative should be explicitly designated by a written mandate of the market participant to be authorised to act on its behalf.

Tasks and powers of the Agency

The Agency will produce and publish a **daily LNG price assessment** and a daily LNG benchmark. LNG market participants will 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).

The new regulation gives the Agency the right to **investigate** cases with a cross-border dimension, where at least two Member States are affected.

The national regulatory authorities will be able to object to the exercise of ACER's investigative powers where an investigation has been formally initiated or an investigation has been carried out on the basis of the same facts. The authorities will have a maximum of three months to formulate their objection.

Under the new regulation, ACER will be empowered to carry out any necessary investigations by conducting **on-site inspections**, by taking statements, as well as by issuing **requests for information**. It will be authorised to collect statements.

ACER will be able to take decisions regarding on-site inspections, requests for information and authorisations or the withdrawal of authorisations for insider information platforms and registered reporting mechanisms.

The Agency will regularly **inform the European Parliament** and the Council of its activities regarding cross-border investigations. For that purpose, the Agency will submit summaries of its investigation reports to the European Parliament and to the Council on a regular basis.

Penalties

ACER will have the power to impose periodic penalty payments in order to ensure compliance with decisions concerning on-site inspections and requests for information. The amount of a periodic penalty payment will be equivalent, in the case of legal persons, to **3%** of the average daily turnover in respect of the previous financial year or, in the case of natural persons, to 2% of the average daily income in the preceding calendar year.

The power to impose **fin**es for infringements of the Regulation or for breaches of the prohibitions or material obligations referred to therein will remain with the Member States. In the case of legal persons, administrative fines will be of a maximum amount that can vary from at least 1% of the total annual turnover in the previous financial year to at least 15%, depending on the type of infringement.

ENTRY INTO FORCE: 7.5.2024.