



2023/0076(COD)

12.5.2023

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DRAFT REPORT

on the proposal for a regulation of the European Parliament and of the Council on Amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

(COM(2023)0147 – C9-0050/2023 – 2023/0076(COD))

Committee on Industry, Research and Energy

Rapporteur: Maria da Graça Carvalho

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

Amendments by Parliament set out in two columns

Deletions are indicated in ***bold italics*** in the left-hand column. Replacements are indicated in ***bold italics*** in both columns. New text is indicated in ***bold italics*** in the right-hand column.

The first and second lines of the header of each amendment identify the relevant part of the draft act under consideration. If an amendment pertains to an existing act that the draft act is seeking to amend, the amendment heading includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend.

Amendments by Parliament in the form of a consolidated text

New text is highlighted in ***bold italics***. Deletions are indicated using either the ▬ symbol or strikeout. Replacements are indicated by highlighting the new text in ***bold italics*** and by deleting or striking out the text that has been replaced.

By way of exception, purely technical changes made by the drafting departments in preparing the final text are not highlighted.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a regulation of the European Parliament and of the Council on Amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market (COM(2023)0147 – C9-0050/2023 – 2023/0076(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0147),
 - having regard to Article 294(2) and Article 114 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C9-0050/2023),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the opinion of the European Economic and Social Committee of ... ¹,
 - having regard to the opinion of the Committee of the Regions of ... ²,
 - having regard to Rules 40 and 59 of its Rules of Procedure,
 - having regard to the opinion of the Committee Economic and Monetary Affairs,
 - having regard to the letter from the Committee on Budgets,
 - having regard to the report of the Committee on Industry, Research and Energy (A9-0000/2023),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1

Proposal for a regulation

Recital 1

¹ OJ C ... / Not yet published in the Official Journal.

² OJ C ... / Not yet published in the Official Journal.

Text proposed by the Commission

(1) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against *attempts of market manipulation*, Regulation (EU) No 1227/2011 should be amended to further increase *insufficient* transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.

Amendment

(1) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against market *abuse*, Regulation (EU) No 1227/2011 should be amended to further increase transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.

Or. en

Justification

Union protection should not be limited only to the 'attempts of market manipulation'. Market abuse is more appropriate notion covering market manipulation, attempts of market manipulation and insider trading. It is not necessary to stress that transparency and monitoring capacities are insufficient, which is debatable and besides gives the impression that the current framework is completely non-operational which is not true. It is enough to highlight that they could be further increased.

Amendment 2

Proposal for a regulation

Recital 2

Text proposed by the Commission

(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation

Amendment

(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation

between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council¹⁷, including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false *or misleading* signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false *or misleading* signals regarding the supply of, demand for, or price of wholesale energy products.

¹⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council¹⁷, including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false signals regarding the supply of, demand for, or price of wholesale energy products.

¹⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

Or. en

Amendment 3

Proposal for a regulation Recital 3

Text proposed by the Commission

(3) The definition of inside information should also be adjusted to *mirror* Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the *financial instruments* concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.

Amendment

(3) The definition of inside information should also be adjusted to *be in line with* Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the *wholesale energy products* concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.

Or. en

Justification

The EC mistakenly refers to financial instruments while it should refer to wholesale energy products.

Amendment 4

Proposal for a regulation Recital 6 a (new)

Text proposed by the Commission

Amendment

(6 a) Market participant, within the meaning of this Regulation, should be

understood as any person, including transmission system operators, distribution system operators, LNG and storage system operators, who enters into transactions in one or more wholesale energy markets. However, when they do not enter into transactions with regard to wholesale energy products distribution system operators, LNG and storage system operators should become exclusively subject to the relevant disclosure obligations under Art. 4 and 8(5).

Or. en

Justification

The recital aims to clarify the inclusion of DSOs, LNG system operators and SSOs within the definition of market participant.

Amendment 5

Proposal for a regulation
Recital 6 b (new)

Text proposed by the Commission

Amendment

(6 b) Market participants should report to the Agency also the data regarding those contracts for the supply of electricity or natural gas, which may result in an effective physical delivery in the Union.

Or. en

Amendment 6

Proposal for a regulation
Recital 8

Text proposed by the Commission

Amendment

(8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale

(8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale

energy markets. Many market participants use algorithmic trading and high frequency algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.

energy markets. Many market participants use algorithmic trading and high frequency algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011. ***However, it is important to specify that the provisions regarding algorithmic trading that are included in the Regulation, do not apply to transmission system operators' areas of activity that use automation (e.g. activation of balancing energy) insofar these automated processes are addressed by the Commission Regulation 2017/2195 establishing a guideline on electricity balancing.***

Or. en

Justification

TSOs use automation in their processes but is better to specify that the new article on algorithmic trading does not apply to their activities are already covered by Commission Regulation 2017/2195.

Amendment 7

Proposal for a regulation Recital 10

Text proposed by the Commission

(10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, new balancing markets, contracts for balancing markets and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency. ***Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and***

Amendment

(10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, new balancing markets, contracts for balancing markets and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency.

report suspected breaches.

Or. en

Justification

It will be ineffective to introduce order book providers as PPATs. In integrated balancing markets, orders and bids from all national procurement systems are anonymised. Operators of balancing platforms, and other member TSOs, have no tools to identify market abuse or unusual behaviour. In the current TSO-TSO model for balancing markets, all operations related to “orders” take place at national level, as does surveillance of orders. Moreover, cross-border surveillance obligation for any PPAT would require high investments in IT solutions, with no additional utility in return.

Amendment 8

Proposal for a regulation

Recital 11

Text proposed by the Commission

(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.

Amendment

(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory ***for market participants*** to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered. ***However, market participants should not be held responsible, nor liable with respect to the obligation to disclose inside information, in case of temporary technical problems of duly registered and authorised IIPs or for any publication error caused by the IIP, provided that the information was transmitted to the platform timely and in line with the format requested.***

Or. en

Justification

Based on the Guidance on REMIT application issued by ACER, is important to clarify that market participants are not responsible for technical problems of the IIP. If the information

was transmitted to the platform in time and there were technical problems, the market participant should therefore not be considered having breached the obligation to disclose inside information. In addition, market participant can't be held responsible for any publication error caused by the IIP.

Amendment 9

Proposal for a regulation Recital 14

Text proposed by the Commission

(14) Persons professionally arranging **and executing** transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and shared order-book providers should be considered as persons professionally arranging transactions.

Amendment

(14) Persons professionally arranging transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and shared order-book providers should **not** be considered as persons professionally arranging transactions.

Or. en

Justification

The provision of direct electronic access to 3rd parties (clients) does not typically represent arranging transactions. Direct electronic access means that a market participant or a member of a trading venue allows a legal entity to use its trading code (access). As a result, this legal entity can pass orders directly to a trading venue, thereby making use of the infrastructure of the provider or a connection system that has been made available by the market participant. But all orders and transactions remain in the name of the entity providing the access.

Amendment 10

Proposal for a regulation Recital 16

Text proposed by the Commission

(16) 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 LNG market data that are necessary to establish a daily LNG price assessment. The price assessment should be undertaken based on all transactions pertaining to LNG deliveries **to** the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report **all** of their LNG market data to ACER **as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions.** Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.

Amendment

(16) 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 LNG benchmark**. The price assessment **and LNG benchmark** should be undertaken based on all transactions pertaining to **relevant** LNG deliveries **into** the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report **a record** of their LNG market data to ACER. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices. **ACER shall minimise the effort requested to LNG market participants by optimising the collection process of the relevant data through the existing sources and reporting mechanisms already in place according to this Regulation.**

Or. en

Justification

In line with the amendments tabled on LNG-related definitions and articles, it is necessary to adapt the concerned recital, underlining that the proposed modifications are done in order to optimise the process of collecting LNG data using as much as possible the reporting mechanisms already in place.

Amendment 11

Proposal for a regulation Recital 17

Text proposed by the Commission

(17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and reduce the burden imposed on market participants. Therefore a clear legal basis should be provided for such delegation. National regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority. Introducing specific conditions and limiting the scope for the delegation to what is necessary for the effective supervision of cross-border market participants or groups should be possible. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.

Amendment

(17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and reduce the burden imposed on market participants. Therefore a clear legal basis should be provided for such delegation. ***Where this does not entail excessive administrative red tape on market participants***, national regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority. Introducing specific conditions and limiting the scope for the delegation to what is necessary for the effective supervision of cross-border market participants or groups should be possible. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.

Or. en

Amendment 12

Proposal for a regulation Recital 20

Text proposed by the Commission

(20) Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of market integration. The absence of a mechanism to ensure the best

Amendment

(20) Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of market integration. The absence of a mechanism to ensure the best

possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is *therefore* a need to set up an efficient and effective supervisory and investigatory regime for this type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone.

possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is a need to set up an efficient and effective supervisory and investigatory regime for this type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone, *especially when the national regulatory authorities are not already taking action*.

Or. en

Amendment 13

Proposal for a regulation Recital 22

Text proposed by the Commission

(22) The Agency should be empowered to carry out investigations by conducting on-site inspections and by issuing requests for information to the persons under investigations, in particular where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with full assistance, including where a person refuses to be subject to the inspection or to provide the requested information. It is important that the procedural guarantees and fundamental rights of the persons *concerned of the persons* subject to the Agency's investigations are fully respected. The confidentiality of the information submitted by the persons

Amendment

(22) The Agency should be empowered to carry out investigations by conducting on-site inspections and by issuing requests for information to the persons under investigations, in particular where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with full assistance, including where a person refuses to be subject to the inspection or to provide the requested information. It is important that the procedural guarantees and fundamental rights of the persons subject to the Agency's investigations are fully respected. The confidentiality of the information submitted by the persons subject to the investigation should be

subject to the investigation should be safeguarded exchanged in accordance with applicable Union data protection rules.

safeguarded exchanged in accordance with applicable Union data protection rules.

Or. en

Justification

Linguistic amendment

Amendment 14

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point a
Regulation (EU) 1227/2011
Article 1, paragraph 2

Text proposed by the Commission

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Amendment

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of **Regulation (EU) 596/2014**, Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Or. en

Justification

Alignment - Reference to the Market Abuse Regulation (Reg 596/2014) is relevant and currently cited only in Recital 4, but missing from Article 1.

Amendment 15

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point b
Regulation (EU) No 1227/2011
Article 1, paragraph 3, sub-paragraph 2

Text proposed by the Commission

The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall ***in particular*** exchange relevant information and data ***on a regular, at least quarterly, basis*** regarding potential breaches of Regulation (EU) No 596/2014 of the European Parliament and of the Council involving wholesale energy products covered by this Regulation.

Amendment

The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall exchange relevant information and data regarding potential breaches of Regulation (EU) No 596/2014 of the European Parliament and of the Council involving wholesale energy products covered by this Regulation.

Or. en

Justification

Deletion of 'in particular' to improve clarity. Here it is needed that ACER, NRAs, ESMA and national competent financial authorities have mechanisms to make sure they always exchange information given the importance of providing the appropriate supervision without creating overlapping between roles and responsibilities that might be even detrimental to the overall objectives. We leave to the relevant authorities the definition of the best periodicity, taking into account that they have to respect the obligation to exchange information and data.

Amendment 16

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point a – paragraph 1

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point (e)

Text proposed by the Commission

(e) information conveyed by a ***client*** or by other persons acting on the ***client's*** behalf and relating to the ***client's*** pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products;

Amendment

(e) information conveyed by a ***third party*** or by other persons acting on the ***market participants'*** behalf and relating to the ***market participants'*** pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products;

Or. en

Justification

The paragraph comes from MAR, Article 7 (d), and was included in the Remit proposal, but we should be coherent and consistent with the proper Remit terminology, hence the use of "third party" and "market participants".

Amendment 17

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point (1), subparagraph 4a

Text proposed by the Commission

Amendment

For the purposes of paragraph 1, the Commission shall be empowered to adopt a delegated act in accordance with Article 20 to set out and review, where necessary, a non-exhaustive list of relevant intermediate steps in a protracted process if, by itself, the information meets the criteria laid down in this Article.

Or. en

Justification

The proposal that Inside Information shall also cover events (intermediate steps) that occur in the context protracted processes is highly problematic and should be given more consideration as it creates uncertainty and complexity. Market participants needs more explanations and legal clarify and security what constitutes inside information in a protracted process. A simple-copy paste from MAR disregards the specifics of the energy markets and firms. An information should qualify as 'inside information' if 'by itself, it satisfies the criteria of inside information'.

Amendment 18

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 1, subparagraph 5

Text proposed by the Commission

Amendment

For the purposes of paragraph 1,

For the purposes of paragraph 1,

information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable *investor* would be likely to use as part of the basis of his or her *investment* decision(s);

information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable *market participant* would be likely to use as part of the basis of his or her decision(s) *to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.*

Or. en

Justification

The terms “investor” and “investment decision” are specific MAR terms which do not fit in the context of REMIT. The proposal needs to be tailored to the terminology of REMIT. An “investor” becomes a “market participant” as soon as he enters into transactions relating to wholesale energy products.

Amendment 19

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point b

Regulation (EU) 1227/2011

Article 2, paragraph 1, point 1, subparagraph 5 a (new)

Text proposed by the Commission

Amendment

ACER shall define, in close cooperation with National Regulatory Authorities, thresholds for the identification of events which, if they were made public, would likely to significantly affect the prices of those wholesale energy products;

Or. en

Amendment 20

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point d

Regulation (EU) 1227/2011

Article 2, paragraph 1, point (c)

Text proposed by the Commission

(c) transmitting false **or misleading** information or providing false **or misleading** inputs 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**, or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.”;

Amendment

(c) transmitting false information or providing false inputs 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 engaging in any other behaviour which **intentionally** leads to the manipulation of the calculation of a benchmark.”;

Or. en

Amendment 21

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point f

Regulation (EU) 1227/2011

Article 2, paragraph 1, point (4), point (a)

Text proposed by the Commission

(a) contracts for the supply of electricity or natural gas where delivery is in the Union **or contracts for the supply of electricity or natural gas which may result in delivery in the Union;**”;

Amendment

(a) contracts for the supply of electricity or natural gas where delivery is in the Union;”;

Or. en

Justification

This concept is very vague and might lead to uncertainty and unintended consequences that should be considered in a more appropriate way.

Amendment 22

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point f

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 4, point da (new)

Text proposed by the Commission

Amendment

(a a) contracts and derivatives relating to the electricity and natural gas storages in the Union;

Or. en

Justification

Given that REMIT covers also storage operators as market participants, it is beneficial to add a third type of wholesale energy product for “storage” because COM proposal includes only two types of contracts which are related specifically to “supply” and “transportation”.

Amendment 23

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point g

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 7

Text proposed by the Commission

Amendment

(7) ‘market participant’ means any person, including transmission system operators ***and persons professionally arranging or executing transactions when trading on their own account***, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets; ”;

(7) ‘market participant’ means any person, including transmission system operators, ***distribution system operators, storage system operators and LNG system operators***, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets; ”;

Or. en

Justification

The proposed definitions for ‘market participant’, ‘person professionally arranging transactions’ and ‘organised market place’ are in parts overlapping. The extension to persons professionally arranging transactions when trading on their own account is superfluous as market participants trading on own account are already captured and PPATs should not be defined as market participants if they do not enter into transactions.

Amendment 24

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point h

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 8a

Text proposed by the Commission

(8a) 'person professionally arranging **or executing** transactions' means a person professionally engaged in the reception and transmission of orders for, or in the **execution** of transactions in, wholesale energy products;”;

Amendment

(8a) 'person professionally arranging transactions' means a person professionally engaged in the reception and transmission of orders for, or in the **arrangement** of transactions in, wholesale energy products **which are not financial instruments. Direct electronic access providers are not considered as persons professionally arranging transactions, when they are not providing arrangement services to third parties;**

Or. en

Justification

Definitions shall only apply to wholesale energy products that are not financial instruments to avoid unnecessary doubling of regulation and supervision, as for financial instruments MAR Article 16 applies. Deletion of "execution" wants to better take into account characteristics of physical markets in accordance with REMIT and better define differences between market participants, PPATs and OMPs. Direct electronic access providers place into the market orders of transactions that remain in the name of the entity providing the DEA service thus there is no arranging activity.

Amendment 25

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 18

Text proposed by the Commission

(18) ‘algorithmic trading’ means trading in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the

Amendment

(18) ‘algorithmic trading’ means trading, **including high frequency trading**, in wholesale energy products where a computer algorithm automatically determines individual parameters of orders

order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

Or. en

Justification

High frequency trading is a type of algorithmic trading, so the current definition covers it. It is also mentioned in recital 8. However, to make it clearer a direct reference can be introduced in the definition.

Amendment 26

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 19

Text proposed by the Commission

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);

Amendment

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product, **which is not a financial instrument**, directly to the organised market place, including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person

(sponsored access);

Or. en

Justification

The new Article 5a shall only apply to direct electronic access relating to wholesale energy products which are not financial instruments. Otherwise, the Article 5a REMIT and the Article 17 of MiFID II would be both applicable and create an unnecessary double layer of regulation and supervision.

Amendment 27

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 20

Text proposed by the Commission

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other *person* professionally arranging *or executing* transactions, *including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.*

Amendment

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform, or any other *system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a way that may result in a transaction.*

These include electricity and gas exchanges, brokers, energy balancing or ancillary services platforms, and other persons professionally arranging transactions and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council.

Or. en

Justification

With these changes the scope of the OMP definition is clearer and avoids confusion with market participants and PPATs' definitions. It encompasses also the fact that third parties acting on behalf of energy exchange are covered. It is in line with the definition of OMP already adopted in the regulation 1348/2014, Article 2(4). It includes also a reference to the ancillary services and the energy balancing platforms.

Amendment 28

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 20a (new)

Text proposed by the Commission

Amendment

(20 a) ‘order book’ means all details of wholesale energy products executed at organised market places including matched and unmatched orders as well as system-generated orders and life cycle events.

Or. en

Justification

This definition is missing from REMIT even though the term is used in various places in the text. The new definition clarifies the term.

Amendment 29

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 21

Text proposed by the Commission

Amendment

(21) ‘LNG trading’ means ***bids, offers or transactions for*** the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

(21) ‘LNG trading’ means ***entering into any transaction, including orders to trade in an organised market place or taking any other action relating to*** the purchase or sale of LNG: (a) that specify ***physical*** delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

Or. en

Amendment 30

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point (22)

Text proposed by the Commission

(22) ‘LNG market data’ means records of ***bids, offers or transactions for LNG trading*** with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.

Amendment

(22) ‘LNG market data’ means records of transactions, ***of orders to trade and of any other action relating to the purchase or sale of LNG***, with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.

Or. en

Amendment 31

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 23

Text proposed by the Commission

(23) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading.

Amendment

(23) ‘LNG market participant’ means any ***market participant that is*** natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading.

Or. en

Amendment 32

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 24

Text proposed by the Commission

(24) 'LNG price assessment' means the determination of a **daily** reference price for LNG trading in accordance with a methodology **to be** established by ACER.

Amendment

(24) 'LNG price assessment' means the determination of a reference price for LNG trading in accordance with a methodology established by ACER.

Or. en

Amendment 33

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 1, point 25

Text proposed by the Commission

(25) '**LNG benchmark**' means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.;

Amendment

deleted

Or. en

Amendment 34

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2, paragraph 25a (new)

Text proposed by the Commission

Amendment

(25 a) '**benchmark**' means any index that is periodically or regularly determined by the application of a formula to, or on the basis of the value of, one or more underlying wholesale energy products, including estimated prices, by reference to which the amount payable under a wholesale energy product or a contract

relating to a wholesale energy product, or the value of a wholesale energy product, is determined.

Or. en

Justification

The term “benchmark” needs to be defined for the application of the new benchmark manipulation definition. The definition is aligned with the definition of a benchmark under Article 3 point (3) of Regulation EU 2016/1011 (on indices used as benchmarks in financial instruments and financial contracts) and in line with the definition of benchmark under MAR (Regulation EU 596/2014), with the necessary adaptations to the energy market.

Amendment 35

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 1227/2011

Article 4, paragraph 1, subparagraph 1a (new)

Text proposed by the Commission

Amendment

This requirement shall not apply to intermediate steps in a protracted process as referred to in Article 2(1), where those steps are connected with bringing about a set of circumstances or an event.

Or. en

Justification

The introduction of this concept of protracted process needs to be framed within Article 4. The market participants should only disclose the information related to the event that a protracted process intends to bring about, at the moment when such information is sufficiently precise, e.g., such as when the management board has taken the relevant decision to bring about that event, e.g., the decision to build a power plant. They shall disclose only the information relating to the event that is intended to complete a protracted process.

Amendment 36

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a

Regulation (EU) 1227/2011

Article 4, paragraph 1, subparagraph 2a (new)

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Text proposed by the Commission

Amendment

Market participants may use other channels, including market participants' websites, only in addition to the publication through IIPs and provided that equal conditions on timeliness and accessibility are ensured.

Or. en

Justification

It is important to allow for the publication of inside information also through other channels, as it has happened so far, and to specify that this must be in addition to the publication through IIPs and not in substitution. It can be useful to have a backup in case of any technical problem with IIPs arise.

Amendment 37

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point b

Regulation (EU) No 1227/2011

Article 4, paragraph 4

Text proposed by the Commission

Amendment

The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes, ***complete and*** effective ***public*** disclosure but not ***necessarily*** disclosure ***in a timely manner in*** the meaning of paragraph 1 of this Article.

The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes effective disclosure but not ***timely, public*** disclosure ***within*** the meaning of paragraph 1 of this Article.

Or. en

Justification

The updated wording clarifies that the publication of inside information according to Regulations 714/2009 and 715/2009 does not fully address the requirement in Article 4 paragraph 1, because while it is considered effective disclosure, it is not timely.

Amendment 38

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 1

Text proposed by the Commission

1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements of this Article and has authorised **the** operation. The register of **IPPs** shall be publicly available and shall contain information on the services for which the IIP is **registered**. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn **a registration** in accordance with paragraph 5, **that withdrawal shall be published in the register for a period of five years from the date of withdrawal.**

Amendment

1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements of this Article and has authorised **its** operation. The register of **IIPs** shall be publicly available and shall contain information on the services for which the IIP is **authorised**. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn **an authorisation to an IIP** in accordance with paragraph 5, **it shall remove that IIP from** the register.

Or. en

Justification

Streamlining of the language and simplification of the procedures.

Amendment 39

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 2

Text proposed by the Commission

2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be

Amendment

2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be

made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.

made available *and accessible* for all purposes free of charge. *However, IIPs may have further application programming interfaces to process the information, which can be made available to the public, and in these cases they can do it on a reasonable commercial basis.* The IIP shall efficiently and consistently disseminate such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.

Or. en

Justification

Some technical work is necessary to develop application programming interfaces that can be useful to further elaborate the information which is made public. A distinction should be possible and when there is technical work and investments done, can be recovered by IIPs on a commercial basis.

Amendment 40

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 1227/2011

Article 4a, paragraph 3

Text proposed by the Commission

Amendment

3. *The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:*

deleted

- (a) the message ID and event status;***
- (b) the publication date, the time and the start and stop of the event;***
- (c) the market participant name and the market participant identification;***
- (d) the bidding or balancing zone concerned;***

- (e) *and, where applicable:*
- (a) *the type of unavailability and the type of event;*
 - (b) *the unit of measurement;*
 - (c) *the unavailable, the available and the installed or technical capacity;*
 - (d) *the reason for the unavailability;*
 - (e) *the fuel type;*
 - (f) *the affected asset or unit and its identification code.*

Or. en

Justification

It is proposed to delete the list proposed by the Commission and leave it to be decided through the implementing act foreseen in paragraph 6, as there is the need to be careful when considering which are the details related to inside information that shall be published.

Amendment 41

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 4, subparagraph 3

Text proposed by the Commission

The IIP shall *have systems in place* that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request *re-transmission of any such erroneous* reports.

Amendment

The IIP, *together with market participants*, shall *enable a mechanism* that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request *to receive a corrected version of such* reports.

Or. en

Amendment 42

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011
Article 4a, paragraph 5

Text proposed by the Commission

Amendment

The Agency may withdraw the **registration** of an IIP where the **latter**:

The Agency may withdraw the **authorisation** of an IIP, **and remove it from the register**, where the **IIP**:

Or. en

Justification

Alignment with previous amendments

Amendment 43

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 5, point (c)

Text proposed by the Commission

Amendment

(c) no longer meets the **conditions under which it was registered**;

(c) no longer meets the **requirements for authorisation set out in this Article**;

Or. en

Justification

Streamlining of language

Amendment 44

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 5, subparagraph 2

Text proposed by the Commission

Amendment

When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of

When the registration has been withdrawn, **to ensure continuity** the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the

reporting flows to other IIPs.

redirection of reporting flows to other IIPs.
The Agency shall set a reasonable period for such orderly substitution, taking into account the relevant specificities.

Or. en

Justification

It is necessary to provide for a clearer role and process for ACER in cases of withdrawing of IIPs' registration.

Amendment 45

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 5, subparagraph 3

Text proposed by the Commission

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the **registration** of an IIP.

Amendment

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established, **and inform market participants**, of a decision to withdraw the **authorisation** of an IIP.

Or. en

Justification

The market participants must be aware of this as they are the first interested parties to know that an IIP is no longer active.

Amendment 46

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 6

Text proposed by the Commission

The Commission shall, **by means of**

Amendment

By [18 months after the entry into force of the amending regulation], the

implementing acts, *specify*:

Commission shall *adopt* implementing acts, *specifying*:

Or. en

Justification

It is necessary to give some time to adapt the new rules, properly consulting Member States and stakeholders.

Amendment 47

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 1227/2011

Article 4a, paragraph 6, point b

Text proposed by the Commission

(b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;

Amendment

(b) the content *and the relevant details* of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;

Or. en

Justification

The relevant details that were listed in paragraph 3 and were deleted, should be included here to make sure the implementing regulation provides better guidance to the market participants.

Amendment 48

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) 1227/2011

Article 4a, paragraph 6, point (c)

Text proposed by the Commission

(c) the concrete organisational requirements for the implementation of *paragraph 4*.

Amendment

(c) the concrete organisational requirements for the implementation of *paragraphs 4 and 5*.

Justification

The implementing act should cover also the details concerning the process of withdrawing an authorisation, of orderly substitution and of informing market participants.

Amendment 49**Proposal for a regulation****Article 1 – paragraph 1 – point 6**

Regulation (EU) 1227/2011

Article 5a, paragraph 2

Text proposed by the Commission

The national regulatory authority of the Member State *of* the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the *nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk* controls that *it has* in place to ensure that the *requirement* laid down in paragraph 1 are satisfied *and details of the testing of its trading systems*.

Amendment

The national regulatory authority of the Member State *where* the market participant *is registered pursuant to paragraph 1 of Article 9*, may require the market participant to provide, on a regular or ad-hoc basis, a description of the *process*, parameters *and* controls that *are* in place to ensure that the *requirements* laid down in paragraph 1 are satisfied.

Justification

To avoid trade secrets and confidential information are shared

Amendment 50**Proposal for a regulation****Article 1 – paragraph 1 – point 8**

Regulation (EU) No 1227/2011

Article 7a, paragraph 1

Text proposed by the Commission

1. *As a matter of urgency*, ACER shall produce and publish a *daily* LNG

Amendment

1. ACER shall produce and publish a LNG price assessment *and a LNG*

price assessment *starting no later than 13 January 2023*. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.

benchmark. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions, *also on the basis of the LNG market data reporting in accordance with Article 8(1b)*. The price assessment shall where appropriate take into account regional differences and market conditions.

Or. en

Justification

All changes proposed throughout Articles 7a, 7b, 7c and 7d are done in order to integrate the same provisions included in the Com proposal within the Remit processes and procedures, but making sure we keep the main and most important elements of what the Articles were suggesting. This is also a way to make sure that those articles - that have been copied from the Gas Solidarity Regulation and pasted here as they are - become an integral part of Remit.

Amendment 51

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7a, paragraph 1a (new)

Text proposed by the Commission

Amendment

1 a. For the purposes of producing and publishing the LNG price assessment and benchmark, ACER may make use of the services of a third party.

Or. en

Amendment 52

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7a, paragraph 1b (new)

Text proposed by the Commission

Amendment

1 b. The Commission shall be empowered to:

[a] adopt rules to define the production and publication of LNG price assessments and LNG benchmarks

[b] adopt rules for the LNG reference price assessment and LNG benchmark methodology of ACER;

[c] adopt rules for the timing and frequency of production and publication of LNG price assessments and LNG benchmarks.

Those acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of the implementing acts adopted under Article 8 (2) and (6) with regard to the LNG market data reporting.

Or. en

Amendment 53

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7a, paragraph 2

Text proposed by the Commission

Amendment

2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.

deleted

Amendment 54

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7a, paragraph 3

Text proposed by the Commission

Amendment

3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality. *deleted*

Or. en

Amendment 55

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7b

Text proposed by the Commission

Amendment

Article 7b *deleted*

Or. en

Amendment 56

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7b, Title

Text proposed by the Commission

Amendment

Publication of LNG price assessments and benchmark

deleted

Or. en

Amendment 57

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7b, paragraph 1

Text proposed by the Commission

Amendment

1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.

deleted

Or. en

Amendment 58

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7b, paragraph 2

Text proposed by the Commission

Amendment

2. For the purposes of this Article, ACER may make use of the services of a third party.

deleted

Or. en

Amendment 59

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7c, paragraph 1

Text proposed by the Commission

1. LNG market participants shall submit **daily** to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, 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**).

Amendment

1. LNG market participants shall submit to ACER the LNG market data **as provided for by Article 8, paragraph 1b, free of charge, through the reporting channels established by ACER and** in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the LNG price assessment.

Or. en

Amendment 60

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7c, paragraph 2

Text proposed by the Commission

2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted **before the daily** publication of the LNG price assessment as referred to in **paragraph 1**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article **29**.

Amendment

2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted **to ACER, and the timing and frequency of the** publication of the LNG price assessment as referred to in **Article 7a**. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article **21(2)**.

Or. en

Amendment 61

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7c, paragraph 4

Text proposed by the Commission

Amendment

4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, where possible using already existing and available procedures. *deleted*

Or. en

Justification

The main elements contained in this paragraph are now included in paragraph 1.

Amendment 62

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7d

Text proposed by the Commission

Amendment

Article 7d *deleted*

Or. en

Amendment 63

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7d, Title

Text proposed by the Commission

Amendment

Business continuity *deleted*

Amendment 64

Proposal for a regulation

Article 1 – paragraph 1 – point 8

Regulation (EU) No 1227/2011

Article 7d, paragraph 1

Text proposed by the Commission

Amendment

ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of LNG market data contributors.”;

deleted

Or. en

Amendment 65

Proposal for a regulation

Article 1 – paragraph 1 – point 8 a (new)

Regulation (EU) No 1227/2011

Article 7da (new)

Text proposed by the Commission

Amendment

- (8 a) New article 7da is added:*
- LNG market data quality*
- 1. LNG market data shall include:*
- (a) the parties to the contract, including buy/sell indicator;*
 - (b) the reporting party;*
 - (c) the transaction price;*
 - (d) the contract quantities;*
 - (e) the value of the contract;*
 - (f) the arrival window for the LNG cargo;*

- (g) the terms of delivery;*
- (h) the delivery points;*
- (i) the timestamp information on all of the following:*
 - (i) the date and time of placing the bid or offer;*
 - (ii) the transaction date and time;*
 - (iii) the date and time of reporting of the bid, offer or transaction;*
 - (iv) the receipt of LNG market data by ACER.*

2. LNG market participants shall provide ACER with LNG market data in the following units and currencies:

- (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;*
- (b) contract quantities shall be reported in the units specified in the contracts and in MWh;*
- (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;*
- (d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format; (to be replaced with cross-references as appropriate)*
- (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.*

3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its

Amendment 66

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point a

Regulation (EU) No 1227/2011

Article 8, paragraph 1a

Text proposed by the Commission

(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, those market places shall make available to the Agency *data relating to the order book or, upon the Agency's request, give the Agency access to the order book so that it is able to monitor trading.*;

Amendment

(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, *where a market participant trades through an organised market place*, those *organised* market places, *or third parties on their behalf*, shall make *the order books* available to the Agency, *fulfilling on behalf of market participants their obligations in accordance with paragraph 1.*

Justification

The amendment provides clarity and aims at avoiding to double the amount of data that must be reported. The proposed modifications make sure that order book are shared in any case in order to allow that the Agency performs the supervision correctly, but removing the double reporting from individual market participants. At the same time, bilateral contracts should continue to be reported in accordance with Article 8, paragraph 1.

Amendment 67

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point a

Regulation (EU) No 1227/2011

Article 8, paragraph 1aa (new)

Text proposed by the Commission

Amendment

(1a a) LNG market participants and any other person or authority on their behalf, as listed in points (b) to (f) of paragraph 4, shall provide systematically the Agency with a record of LNG market data, in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014 .

Or. en

Justification

Coherently with the changes proposed to Articles 7a, 7b, 7c and 7d, in order to make sure that ACER properly collects all relevant LNG market data and to ensure that this process is effectively integrated in the current REMIT provisions, we propose to include a new provision in Article 8 giving the obligation to market participants to provide the Agency with those data.

Amendment 68

Proposal for a regulation

Article 1 – paragraph 1 – point 9 – point d – point i

Regulation EU 1227/2011

Article 8, paragraph 4, point (d)

Text proposed by the Commission

Amendment

(d) an organised market place, a trade-matching system or other person professionally arranging ***or executing*** transactions;

(d) an organised market place, a trade-matching system or other person professionally arranging transactions;

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs.

Amendment 69

Proposal for a regulation

Article 1 – paragraph 1 – point 10

Text proposed by the Commission

1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall ***declare an office, in a Member State in which they are active and*** register with the national regulatory authority of ***that*** Member State.;

Amendment

1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall register with the national regulatory authority of ***a*** Member State ***in which they are active***;

Or. en

Amendment 70

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 1227/2011

Article 9a, paragraph 1, subparagraph 3

Text proposed by the Commission

The authorisation to operate as RRM shall be effective and valid for the entire territory of the Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union.

Amendment

The authorisation to operate as RRM ***shall be given by the Agency within a reasonable time period and preferably in less than 3 months from the receipt of the application. The authorisation*** shall be effective and valid for the entire territory of the Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union.

Or. en

Justification

Authorisation of RRM shall be given within a reasonable time limit that we propose to be less than 3 months.

Amendment 71

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 1227/2011

Article 9a, paragraph 1, subparagraph 3a (new)

Text proposed by the Commission

Amendment

An entity which has already been listed as an RRM before the entry into force of this Regulation, may continue to act as an RRM until it receives by the Agency the authorisation to operate in line with this Article.

Or. en

Justification

It is necessary to ensure continuity before all relevant technical details are decided and enter into force.

Amendment 72

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 1227/2011

Article 9a, paragraph 2

Text proposed by the Commission

Amendment

2. The Agency shall regularly review the compliance of RRM with this Regulation. For this purpose, RRM shall report ***on an annual basis*** about their activities to the Agency.

2. The Agency shall regularly review the compliance of RRM with this Regulation. For this purpose, ***upon the Agency's request***, RRM shall report about their activities to the Agency.

Or. en

Justification

To reduce automatic administrative burden for entities.

Amendment 73

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 1227/2011

Art. 9a, paragraph 3, sub-paragraph 4

Text proposed by the Commission

RRMs shall ***have systems in place that can*** effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to the market participant and request ***re-transmission of any such erroneous*** reports.

Amendment

RRMs shall, ***together with market participants, enable a mechanism allowing to*** effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to the market participant and request ***to receive a corrected version of such*** reports.

Or. en

Justification

It is difficult for RRM to know if transaction reports are correct, therefore is wiser to make sure that RRM put in place a mechanism together with market participants and that is workable and effective.

Amendment 74

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 1227/2011

Article 9a, paragraph 4, subparagraph 3

Text proposed by the Commission

An RRM whose authorisation has been withdrawn shall ensure orderly substitution including the transfer of data to other RRM and the redirection of reporting flows to other RRM.

Amendment

An RRM whose authorisation has been withdrawn, ***to ensure continuity***, shall ensure orderly substitution including the transfer of data to other RRM and the redirection of reporting flows to other RRM. ***The Agency shall set a reasonable period for such orderly substitution, taking into account the relevant specificities.***

Amendment 75

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) 1227/2011

Article 9a, paragraph 5

Text proposed by the Commission

The Commission shall *by means of* implementing acts *specify* :

Amendment

*By [18 months after the entry into force of the amending regulation], the Commission shall **adopt** implementing acts, **specifying**:*

Or. en

Amendment 76

Proposal for a regulation

Article 1 – paragraph 1 – point 13 – point b

Regulation (EU) No 1227/2011

Article 12, paragraph 2

Text proposed by the Commission

2. Subject to Article 17, ACER may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ACER ***shall not be prevented from publishing*** information on organised market places, IIPs, RRMIs ***according to*** applicable data protection laws.”;

Amendment

2. Subject to Article 17, ACER may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ACER ***may publish*** information on organised market places, IIPs, RRMIs ***in accordance with*** applicable data protection laws.”;

Or. en

Justification

The proposed amendments aims at providing clarity through an affirmative version of the

sentence replacing the proposed text. The objective is the same, but like this the wording avoids misinterpretations.

Amendment 77

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point a

Regulation EU 1227/2011

Article 13, paragraph 1, sub-paragraph 5

Text proposed by the Commission

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging **or executing** transactions as referred to in point (d) of Article 8(4).;

Amendment

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging transactions as referred to in point (d) of Article 8(4).;

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs.

Amendment 78

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 3

Text proposed by the Commission

3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a **and 13b**.

Amendment

3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may, **in close and active cooperation with the relevant competent national regulatory authorities**, carry out investigations by exercising the powers conferred onto it by and in

accordance with Articles 13a *to 13d*.

Or. en

Justification

ACER's investigation powers shall be exercised in cooperation with the relevant NRAs and in accordance with all related provisions.

Amendment 79

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 4, point (a)

Text proposed by the Commission

(a) acts are being or have been carried out on wholesale energy products for delivery in at least **three** Member States; or

Amendment

(a) acts are being or have been carried out on wholesale energy products for delivery in at least **two** Member States; or

Or. en

Justification

Reducing from three to two the number of Member States, would mean that ACER's investigation may be performed in a slightly bigger percentage of cross-border cases.

Amendment 80

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 4, point (b)

Text proposed by the Commission

(b) acts are being or have been carried on wholesale energy products for delivery in at least **two** Member **States** and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or

Amendment

(b) acts are being or have been carried on wholesale energy products for delivery in at least **one** Member **State** and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in **another Member State or in** a third country but registered pursuant to

Amendment 81

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 4, point (c)

Text proposed by the Commission

(c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or

Amendment

(c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b) ***in cases having a cross-border dimension***; or

Or. en

Justification

In order to strengthen the principle of subsidiarity, the ACER discretion should be reduced to include as an additional criteria for ACER jurisdiction situations by limiting the jurisdiction under point 4 (c) to cross border cases. This would limit the set of circumstances under which ACER would intervene to those practices having a cross-border impact which are not caught by national jurisdictions, and is therefore respectful of the principle of subsidiarity and proportionality.

Amendment 82

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation EU No 1227/2011

Article 13, paragraph 4, point (d)

Text proposed by the Commission

(d) the ***relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of***

Amendment

(d) the ***competent national regulatory authority requests the Agency to exercise its powers in acts that, even if not falling***

wholesale energy products for delivery in at least three Member States.

within points a), b) or c), have a cross-border dimension.

Or. en

Justification

Where appropriate and if necessary, national authorities can always ask ACER to exercise its investigative powers in other cases of cross-border dimension.

Amendment 83

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation EU 1227/2011

Article 13, paragraph 5

Text proposed by the Commission

5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging **or executing** transactions on wholesale energy products for delivery in at least **three** Member States.

Amendment

5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging transactions on wholesale energy products for delivery in at least **two** Member States.

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs. Reducing from three to two Member States increases the possible cases of breaches of Article 15 by PPATs that ACER can investigate.

Amendment 84

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 6

Text proposed by the Commission

6. In exercising its powers, the Agency shall take into account the

Amendment

6. In exercising its powers, the Agency shall take into account the

investigations in progress or already carried out in respect of the same *cases* by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.

investigations in progress or already carried out in respect of the same *acts* by a national regulatory authority pursuant to this Regulation as well as the cross-border impact of the investigation.

Or. en

Justification

Correction

Amendment 85

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 7

Text proposed by the Commission

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.;

Amendment

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, ***including, where appropriate, a suggestion about which measures may be suitable to be considered by the relevant national authorities*** and, where necessary, inform the Commission;

Or. en

Justification

Where appropriate, within the follow-up recommendations, the Agency may also suggest to the relevant national authorities which is the kind of penalties that it would consider fitting

the case.

Amendment 86

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b

Regulation (EU) No 1227/2011

Article 13, paragraph 7a (new)

Text proposed by the Commission

Amendment

7 a. The Agency shall, on a periodical, at least yearly basis, present the reports it has drawn up, in aggregate form, to the European Parliament and the Council.

Or. en

Justification

The Agency should keep the European Parliament and the Council informed about the conclusions of the investigations performed in accordance with this Article.

Amendment 87

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13a, paragraph 2

Text proposed by the Commission

Amendment

2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.

2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement ***to the persons subject to the investigation.***

Or. en

Justification

Addition aims at ensuring clarity in a way that the Agency can carry out unannounced inspections, namely without advance warning to the persons subject to the investigation.

Amendment 88

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13a, paragraph 4

Text proposed by the Commission

4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it ***does not object to those inspections.***

Amendment

4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it ***is not about to start or is not in the process of carrying out an inspection at any premises of the person subject to the investigation.***

Or. en

Justification

The amendment wants to avoid duplication of inspections at both ACER and national level.

Amendment 89

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13ca (new)

Text proposed by the Commission

Amendment

Article 13ca

Power to take statements

1. In order to carry out the duties assigned

to it by this Regulation, the Agency may interview any natural or legal person who consents to be interviewed for the purpose of collecting information relating to the subject-matter of an investigation.

2. Where an interview pursuant to paragraph 1 is conducted in the premises of an undertaking, the Agency shall inform the regulatory authority of the Member State in whose territory the interview takes place. The officials of the regulatory authority of that Member State may assist the officials and other accompanying persons authorised by the Agency to conduct the interview.

Or. en

Justification

A new Article 13c is proposed in order to ensure that ACER has a comprehensive set of investigatory tools that will allow the Agency to appropriately scrutinise the market behaviours. In particular the power to take statements is relevant in the field of market abuse investigations as it will allow the Agency to obtain explanations from the market participants involved in the behaviours observed in the markets. The current EC proposal misses this relevant investigatory power that is key for investigating the trading strategies pursued by market participants and individual traders.

Amendment 90

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13d, paragraph 1

Text proposed by the Commission

1. In order to ensure compliance with the relevant requirements set out in this Regulation, national **regulatory** authorities and the Agency shall assist each other.”;

Amendment

1. In order to ensure compliance with the relevant requirements set out in this Regulation, national **competent** authorities and the Agency shall assist each other **in the course of the investigations**.”;

Or. en

Amendment 91

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation EU 1227/2011

Article 15, Title

Text proposed by the Commission

Amendment

Obligations of persons professionally arranging *or executing* transactions

Obligations of persons professionally arranging transactions

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs.

Amendment 92

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation EU 1227/2011

Article 15, paragraph 1

Text proposed by the Commission

Amendment

Any person professionally arranging *or executing* transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Any person professionally arranging transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs.

Amendment 93

Proposal for a regulation

Article 1 – paragraph 1 – point 16

Regulation EU 1227/2011
Article 15, paragraph 2

Text proposed by the Commission

Persons professionally arranging **or executing** transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

Amendment

Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:

Or. en

Justification

Providing coherence with the amendment to the definition of PPATs.

Amendment 94

Proposal for a regulation

Article 1 – paragraph 1 – point 17 – point a a (new)

Regulation (EU) No 1227/2011

Article 16, paragraph 1, sub-paragraph 2

Present text

The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as appropriate.

Amendment

(a a) Article 16, paragraph 1, sub-paragraph 2 is replaced by the following:

"The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as well as non-exhaustive indicators relating to market manipulation and insider trading set out in Article 3 and Article 5 respectively, as appropriate.

"

Or. en

(Regulation (EU) No 1227/2011)

Justification

The proposed change ensures that ACER can publish guidance on indicators and examples of market manipulation. In fact, market manipulation is a very wide concept and is useful for market participants to have a better understanding of what is considered under this concept. MAR has an Annex defining possible examples, but given that market developments are very fast, in our view it is more efficient if ACER develops guidance documents that can be more

easily (and timely) updated if needed.

Amendment 95

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) 1227/2011

Article 16a, paragraph 1

Text proposed by the Commission

1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to other national regulatory authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their national regulatory authorities enter into such delegation agreements and may limit the scope of delegation to what is necessary for the effective supervision of market participants or groups.

Amendment

1. National regulatory authorities may, with the consent of the delegate ***and only if it will not result in disproportionate administrative burden for market participants***, delegate tasks and responsibilities to other national regulatory authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their national regulatory authorities enter into such delegation agreements and may limit the scope of delegation to what is necessary for the effective supervision of market participants or groups.

Or. en

Justification

The delegation of tasks and responsibilities might create more burden for market participants, therefore it shall be limited to when is absolutely necessary.

Amendment 96

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) No 1227/2011

Article 16b, paragraph 1

Text proposed by the Commission

1. The Agency shall, with a view to establish consistent, efficient and effective

Amendment

1. The Agency shall, with a view to establish consistent, efficient and effective

supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles **4a**, **8** and 9a.

supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles **3**, **4**, **4a**, **5**, **8**, **9** and 9a. ***The guidelines issued by the Agency are of non-binding nature, however the national regulatory authorities and market participants are encouraged to make every effort to comply with those guidelines and recommendations.***

Or. en

Justification

ACER should also be able to issue guidelines or recommendations on the application of Article 3 (prohibition of insider trading), 4 (obligation to publish inside information), Article 5 (prohibition of market manipulation) and of Article 9 (registration of market participants). This would complete the scope of this empowerment to clarify the relevant obligations of market participants and ensure an EU-wide harmonized application of these.

Amendment 97

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) No 1227/2011

Article 16b, paragraph 2

Text proposed by the Commission

2. The Agency shall, ***where*** appropriate, ***conduct*** public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.

Amendment

2. The Agency shall ***conduct*** appropriate public consultations, ***within an adequate and realistic timeframe***, regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.

Amendment 98

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) 1227/2011

Article 16b, paragraph 3

Text proposed by the Commission

Amendment

3. *The national regulatory authorities and market participants shall make every effort to comply with those guidelines and recommendations.* **deleted**

Or. en

Justification

Deleted here and moved to paragraph 1

Amendment 99

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) 1227/2011

Article 16b, paragraph 4

Text proposed by the Commission

Amendment

4. *Within two months of the issuance of a guideline or recommendation, each national regulatory authority shall confirm whether it complies or intends to comply with **that** guideline or recommendation. If a national regulatory authority does not comply or does not intend to comply, it shall inform the Agency, stating its reasons.*

4. Each national regulatory authority shall confirm **to the Agency** whether it complies or intends to comply with **a given** guideline or recommendation. If a national regulatory authority does not comply or does not intend to comply, it shall inform the Agency, stating its reasons.

Or. en

Amendment 100

Proposal for a regulation

Article 1 – paragraph 1 – point 18

Regulation (EU) 1227/2011

Article 16b, paragraph 6

Text proposed by the Commission

6. If required by that guideline or recommendation, market participants shall **report, in a clear and detailed way**, whether they comply with that guideline or recommendation.

Amendment

6. If required by that guideline or recommendation, market participants shall **notify the Agency** whether they comply with that guideline or recommendation. **Under Agency's request, they shall report their reasons in a clear and detailed way.**

Or. en

Justification

To reduce administrative burden for the market participants

Amendment 101

Proposal for a regulation

Article 1 – paragraph 1 – point 20 a (new)

Regulation (EU) 1227/2011

Article 21a (new)

Text proposed by the Commission

Amendment

(20 a) The following Article 21a is inserted:

Report and review

By June 2027, the Commission shall assess the application of this Regulation, with particular reference to the impact of this Regulation on market behaviour, market participants, liquidity, reporting requirements and the level of administrative burden for market participants. On the basis of such an assessment, the Commission shall draw up a report and submit it without undue delay to the European Parliament and to the Council, together with any appropriate proposal for revision of this

Regulation.

Or. en

Justification

Given the level of reporting that this regulation entails, it is useful if the Commission draws up a report to understand the impact of this legislation and the level of administrative burden for market participants. On the basis of the assessment, it might want to propose a revision of the rules.

Amendment 102

Proposal for a regulation

Article 3

Implementing Regulation (EU) No 1348/2014

Article 7a

Text proposed by the Commission

Amendment

Article 3

deleted

***Amendments to Commission
Implementing Regulation (EU) No
1348/2014***

***Commission Implementing Regulation
(EU) No 1348/2014 is amended as
follows:***

(1) Article 7a is added:

‘

Article 7a

LNG market data quality

1. LNG market data shall include:

- (a) the parties to the contract,
including buy/sell indicator;***
- (b) the reporting party;***
- (c) the transaction price;***
- (d) the contract quantities;***
- (e) the value of the contract;***
- (f) the arrival window for the LNG
cargo;***
- (g) the terms of delivery;***

- (h) the delivery points;*
- (i) the timestamp information on all of the following:*
 - (i) the date and time of placing the bid or offer;*
 - (ii) the transaction date and time;*
 - (iii) the date and time of reporting of the bid, offer or transaction;*
 - (iv) the receipt of LNG market data by ACER.*

2. LNG market participants shall provide ACER with LNG market data in the following units and currencies:

- (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;*
- (b) contract quantities shall be reported in the units specified in the contracts and in MWh;*
- (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;*
- (d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format; (to be replaced with cross-references as appropriate)*
- (e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.*

3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its

daily LNG price assessment and LNG benchmarks..

,

Or. en

Justification

Art 7a is deleted from the Implementing Regulation but put it back in the text of the Regulation (EU) No 1227/2011

EXPLANATORY STATEMENT

The energy crisis, considerably worsened by Russia's invasion of Ukraine, led the European Commission to propose, on 14 March 2023, a reform of the Electricity Market Design. As part of this reform, several key pieces of EU legislation are being revised, notably the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT).

This Regulation, which entered into force in 2011, aims to prevent and fight malpractices such as insider trading and market manipulation, thus contributing to ensure the transparency, competitiveness and stability of the EU Energy markets. In the present revision proposal, the Commission envisions a reinforcement of the Agency for the Cooperation of Energy Regulators (ACER) and national regulators' ability to monitor energy market integrity and transparency. The revision also seeks to enable access to better data, as a part of the effort to strengthen the capabilities of these regulators.

Whilst welcoming the European Commission's initiative, and fully supporting its main principles and lines of action, the Rapporteur considers that further efforts are necessary in order to ensure that the announced goals are achieved. Notably, a reinforcement of ACER's role in investigations of potential market abuse cases of cross-border nature, and a clearer set of rules for all market participants, for their own protection and to prevent the exploitation of legal loopholes and contradictions.

Therefore, amendments are introduced with three main principles as guidelines: **Legal Coherence and Transparency**, a **Strengthened European Dimension** and a **Reinforced Market**. To each of these principles corresponds a specific set of actions. Legal Coherence and Transparency shall be enabled by more clarity in the Regulation and a better alignment with other pieces of EU legislation. A Strengthened European Dimension is pursued through the reinforced scope of ACER's actions and its cooperation with national regulators. Finally, measures aimed at removing red tape, unnecessary barriers and redundant reporting contribute to a Reinforced Market.

Examples of specific actions/amendments include:

Legal coherence and transparency

- Better aligning the definitions to the specificities of the energy markets to avoid confusion, overlaps and excessive administrative burden, providing more clarity and setting the ground for an effective implementation of the rules (i.e. definition of 'Organised Market Place', 'Order Books', and 'Inside Information');
- Inclusion of all relevant actors in the definition of 'market participant', while avoiding putting excessive burden on smaller players in the case of persons professionally arranging transactions, with little benefit;
- Better framing the roles of Inside Information Platforms and Registered Reporting Mechanisms, but streamlining language and procedures, while giving market participants more time to adapt to the new rules;

- Adequate integration of the LNG-related articles, imported from the Council Regulation on Enhanced Solidarity Through Better Coordination of Gas Purchases, Reliable Price Benchmarks and Exchanges of Gas Across Borders, into REMIT, in order to provide more clarity and avoid repetition of tasks and reporting exercises;

Strengthened European Dimension

- Reinforcing ACER's powers, namely by modifying the criteria for identifying cross-border cases that can be investigated by ACER and enhancing its investigative capabilities;
- Enhancing the exchange of information between energy and financial authorities, making sure that monitoring is effective and does not overlap;
- Keeping a balance between ACER's responsibilities and National Regulatory Authorities' roles, especially when the latter can perform the concerned activities; where they cannot, ACER should play a part. The Rapporteur decided to respect the NRA's primary role in the enforcement phase;
- Supporting the European Commission's proposal to reinforce ACER's task to produce guidelines and recommendations, while preventing the superfluous administrative burden that these might entail for market participants;

Reinforced market

- Avoiding excessive administrative work and reduce red tape for market participants;
- Making sure adequate access to the markets is granted also for third country players;
- Making sure that investments are safeguarded, by ensuring that information regarding the investments process shall be disclosed only when it is certain that the concerned data might influence the market.

On a final note, the Rapporteur would like to remind that the present revision was put forward by the European Commission with a considerable degree of urgency, and that, for this reason, its impact should be monitored with particular care. Therefore, an amendment was introduced calling on the European Commission to conduct an assessment of the Regulation, no later than by June 2027, paying special attention to impacts on market behaviour, market participants, liquidity, reporting requirements and the level of administrative burden for market participants.

**ANNEX: LIST OF ENTITIES OR PERSONS
FROM WHOM THE RAPPORTEUR HAS RECEIVED INPUT**

The following list is drawn up on a purely voluntary basis under the exclusive responsibility of the rapporteur. The rapporteur has received input from the following entities or persons in the preparation of the draft report:

Entity and/or person
ACER - Agency for the Cooperation of Energy Regulators
European Commission - DG ENER
ENTSO-E - European Network of Transmission System Operators for Electricity
CEER - Council of European Energy Regulators
Eurelectric - Federation of the European electricity industry
ICE - Intercontinental Exchange
EDF - Électricité de France
EFET - European Federation of Energy Traders
Europex - Association of European Energy Exchanges
RWE AG
Lightsource BP
EGEC - The European Geothermal Energy Council
Form Energy
Eurofer AISBL - The European Steel Association
STEAG Power GmbH
AFEP - Association française des entreprises privées
SolarPower Europe
Endesa Energia
ENEL S.p.A.
EDP - Energias de Portugal
ENI S.p.A.
ENGIE
UFE - Union Française de l'Electricité
REN - Redes Energéticas Nacionais, SGPS, SA
Energienet
GME - Gestore dei Mercati Energetici SpA
Terna - Rete Elettrica Nazionale S.p.A
Nordpool AS
Vattenfall
European Energy Exchange AG
Edison Spa
Nordenergi