

REMIT revision

Alternative Compromise Amendment

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[based on compromise amendment tabled by Maria da Graça Carvalho with one addition on page 27 (highlighted in yellow)]

Article 1 (Amendments to Regulation (EU) No 1227/2011)

Article 1

Subject matter, scope and relationship with other Union legislation

1. This Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.
2. This Regulation applies to trading in wholesale energy products. ~~Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies. This Regulation is without prejudice to Directives 2003/6/EC and 2004/39/EC~~ **to the application of Regulations (EU) 596/2014, Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 and Directive (EU) 2014/65 as regards activities involving financial instruments as defined in ~~under~~ Article 4(1), point (15), of Directive (EU) 2014/65, as well as to the application of European competition law to the practices covered by this Regulation.**
3. The Agency, national regulatory authorities, ESMA competent financial authorities of the Member States and, where appropriate, national competition authorities shall cooperate to ensure that a coordinated approach is taken to the enforcement of the relevant rules where actions relate to one or more financial instruments to which Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of this Regulation apply.

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 a 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.

4. The Agency's Administrative Board shall ensure that the Agency carries out the tasks assigned to it under this Regulation in accordance with this Regulation and Regulation (EC) No 713/2009 **and that the Agency has adequate staff and the ability to hire additional personnel, if necessary, to fulfil the new obligations assigned to it.**

5. The Director of the Agency shall consult the Agency's Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

(1) 'inside information' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

For the purposes of this definition, 'information' means:

(a) information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations;

(b) information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities;

(c) information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market, in so far as this information is likely to have a significant effect on the prices of wholesale energy products;

(ca) information conveyed by a market participant ~~client~~ or by other persons acting on the market participants' ~~client's~~ behalf to a service provider trading on ~~and relating to~~ the market participants' ~~client's~~ behalf and relating to the market participant's pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products.

(d) other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product;

Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to ~~occur~~ **occur**, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products. ***Information may be deemed to be of precise nature if it relates to a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, including future circumstances or future events, and***

also if it relates to the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event.

*An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this **point Article**.*

*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 **that a reasonable market participant investor** would be likely to use as part of the basis of his or her **investment** decision(s) to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.;*

For the purposes of paragraph 1, information that has a possible effect on the demand, supply and/or prices of a wholesale energy product, or on the expectations of the demand, supply and/or prices of a wholesale energy product, shall be considered to be directly or indirectly related to the wholesale energy product.

(2) 'market manipulation' means:

(a) entering into any transaction, **or** issuing, **modifying or withdrawing** any order to trade **or engaging in any other behaviour relating to** wholesale energy products **or relevant infrastructure** 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 ~~attempts~~ **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, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employs ~~or attempts to employ~~ 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;

or

(b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products;

or

(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.

*Market manipulation may designate the conduct of a legal person, but also, in accordance with **European** Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.*

(3) ‘attempt to manipulate the market’ means:

(a) entering into any transaction, issuing any order to trade or taking any other action relating to a wholesale energy product with the intention of:

(i) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(ii) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or

(iii) employing 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;

or

(b) disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;

(4) ‘wholesale energy products’ means the following contracts and derivatives, irrespective of where and how they are traded:

(a) contracts for the supply of electricity or natural gas, **including LNG**, where delivery is in the Union **or contracts for the supply of electricity and natural gas which may result in delivery in the Union, as a result of single day-ahead and intraday coupling;**

(aa) contracts and derivatives relating to the electricity and natural gas storage in the Union;

(b) derivatives relating to electricity or natural gas produced, traded or delivered in the Union, **or derivatives relating to electricity or natural gas which may result in delivery in the Union, as a result of single day-ahead and intraday coupling;**

(c) contracts relating to the transportation of electricity or natural gas in the Union;

(d) derivatives relating to the transportation of electricity or natural gas in the Union.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products;

(5) ‘consumption capacity’ means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.

For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;

(6) ‘wholesale energy market’ means any market within the Union on which wholesale energy products are traded;

(7) ‘market participant’ means any person, including transmission system operators ~~and persons professionally arranging or executing transactions when trading on their own account, 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;

(8) ‘person’ means any natural or legal person;

(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;

(9) ‘competent financial authority’ means a competent authority designated in accordance with the procedure laid down in Article 11 of Directive 2003/6/EC;

(10) ‘national regulatory authority’ means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity ⁽¹⁰⁾ or Article 39(1) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas ⁽¹¹⁾;

(10a) ‘The Agency’ or ‘ACER’ means the European Union Agency for the Cooperation of Energy Regulators;

(11) ‘transmission system operator’ has the meaning set out in point 4 of Article 2 of Directive 2009/72/EC and in point 4 of Article 2 of Directive 2009/73/EC;

(12) ‘parent undertaking’ means a parent undertaking within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts ⁽¹²⁾;

- (13) 'related undertaking' means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;
- (14) 'distribution of natural gas' has the meaning set out in point (5) of Article 2 of Directive 2009/73/EC;
- (15) 'distribution of electricity' has the meaning set out in point (5) of Article 2 of Directive 2009/72/EC.
- (16) **'registered reporting mechanism' or 'RRM' means a person registered under this Regulation to report or to provide the service of reporting details of transactions, including orders to trade, and fundamental data, as defined in Implementing Regulation (EU) No 1348/2014, to the Agency on its own behalf or on behalf of market participants;**
- (17) **'inside information platform' or 'IIP' means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants;**
- (18) **'algorithmic trading' means trading, including high frequency trading, in wholesale energy products where a computer algorithm automatically determines individual parameters of orders 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;**
- (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);**
- (20) **'organised market place' or ('OMP') means an energy exchange, an energy broker, an energy capacity platform, or any other person 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 where two natural persons enter into each trade on their own account;**
- (20a) '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;**

- (21) **'LNG trading'** means ~~bids, offers or transactions for 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 specifies physical delivery in the Union;~~
 - (b) ~~that results in delivery in the Union; or~~
 - (c) ~~in which one counterparty re-gasifies the LNG at a terminal in the Union;~~
- (22) **'LNG market data'** means records of ~~bids, offers or transactions, of orders to trade and of any other action relating to the purchase or sale of LNG, for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014;~~
- (23) **'LNG market participant'** means any ~~market participant that is a natural or legal person, irrespective of that person's place of incorporation or domicile, who engages in LNG trading;~~
- (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 the Agency;~~
- (25) **'LNG 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. 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;~~

Article 3

Prohibition of insider trading

1. Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:
- (a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;
 - (b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties;
 - (c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.

The use of inside information by cancelling or amending an order, the establishment of links or dependencies between orders, or any other action relating to entering into transactions or

issuing orders concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading.

2. The prohibition set out in paragraph 1 applies to the following persons who possess inside information in relation to a wholesale energy product:

- (a) members of the administrative, management or supervisory bodies of an undertaking;
- (b) persons with holdings in the capital of an undertaking;
- (c) persons with access to the information through the exercise of their employment, profession or duties;
- (d) persons who have acquired such information through criminal activity;
- (e) persons who know, or ought to know, that it is inside information.

3. Points (a) and (c) of paragraph 1 of this Article shall not apply to transmission system operators when purchasing electricity or natural gas in order to ensure the safe and secure operation of the system in accordance with their obligations under points (d) and (e) of Article 12 of Directive 2009/72/EC or points (a) and (c) of Article 13(1) of Directive 2009/73/EC.

4. This Article shall not apply to:

- (a) transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results from an agreement concluded, or an order to trade placed, before the person concerned came into possession of inside information;
- (b) transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the transmission system operator(s) concerned in order to ensure safe and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to the Agency and the national regulatory authority. This reporting obligation is without prejudice to the obligation set out in Article 4(1);
- (c) market participants acting under national emergency rules, where national authorities have intervened in order to secure the supply of electricity or natural gas and market mechanisms have been suspended in a Member State or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 4.

5. Where the person who possesses inside information in relation to a wholesale energy product is a legal person, the prohibitions laid down in paragraph 1 shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

6. When information is disseminated for the purposes of journalism or artistic expression such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

- (a) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
- (b) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

Article 4

Obligation to publish ~~i~~ Inside information

1. Market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access to that information, including access through a clear application programming interface and complete, correct and timely assessment of the that information by the public.

2. A market participant may under its own responsibility exceptionally delay the public disclosure of inside information so as not to prejudice its legitimate interests provided that such omission is not likely to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon that information. In such a situation the market participant shall without delay provide that information, together with a justification for the delay of the public disclosure, to the Agency and the relevant national regulatory authority having regard to Article 8(5).

3. Whenever a market participant or a person employed by, or acting on behalf of, a market participant discloses inside information in relation to a wholesale energy product in the normal exercise of his employment, profession or duties as referred to in point (b) of Article 3(1), that market participant or person shall ensure simultaneous, complete and effective public disclosure of that information. In the event of a non-intentional disclosure the market participant shall ensure complete and effective public disclosure of the information as soon as possible following the non-intentional disclosure. This paragraph shall not apply if the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association or a contract.

4. 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 ~~simultaneous, complete and effective public disclosure~~ **but not necessarily timely and public disclosure in a timely manner in within the meaning of paragraph 1 of this Article.**

4a. The Agency shall establish a contact point for market participants seeking clarification on whether specific information constitutes inside information in accordance with this Regulation.

The Agency shall develop and operate a platform serving as sector-specific electronic access point for inside information disclosed in accordance with paragraph 1.

5. Where an exemption from the obligation to publish certain data has been granted to a transmission system operator, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, that operator is thereby also exempted from the obligation set out in paragraph 1 of this Article in respect of that data.

6. Paragraphs 1 and 2 are without prejudice to the obligations of market participants under Directives 2009/72/EC and 2009/73/EC, and Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Directives and Regulations, in particular regarding the timing and method of publication of information.

7. Paragraphs 1 and 2 are without prejudice to the right of market participants to delay the disclosure of sensitive information relating to the protection of critical infrastructure as provided for in point (d) of Article 2 of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection ⁽¹³⁾, if it is classified in their country.

Article 4a (new)

Authorisation and supervision of IIPs

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 its~~ operation. The register of ~~IIPs~~ IIPs shall be publicly available and shall contain information on the services for which the IIP is ~~registered~~ authorised. The Agency shall regularly review the compliance of IIPs with this Regulation.

1a. IIPs that have been authorised as Registered Information Services in accordance with Article 11 of the REMIT Implementing Acts and included in the Agency list of IIPs at the date of entry into force of this Regulation shall be treated as compliant and registered as IIPs, until the Agency has taken a decision on the authorisation for those IIPs, following the procedures described in this Article.

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 ~~and~~ without undue delay, on a reasonable commercial basis. The information shall be made available ~~and easily accessible through a website~~ 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.

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

- (a) the message ID and event status;
- (b) the publication date, the time and the start and stop of the event;
- (c) the **name and participation identification of the market participant name and the market participant identification**;
- (d) the bidding or balancing zone concerned;
- (da) the type of information (e.g. unavailability, forecast, actual use) and, where applicable:
 - (ai) the type of unavailability and the type of event;
 - (bii) the unit of measurement;
 - (eiii) the unavailable, the available and the installed or technical capacity;
 - (div) the reason for the unavailability;
 - (ev) the fuel type;
 - (fvi) the affected asset or unit and its identification code.

4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services **at all times**.

The IIP, together with market participants, shall have **systems a mechanism** 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 to receive a corrected version of such reports**.

4a. Where the Agency finds that an IIP has committed one of the infringements of requirements provided for in paragraphs 1 to 4 of this Article, before withdrawing an authorisation pursuant to paragraph 5, it shall take one or more of the measures in accordance with Article 13g. the Agency finds that an IIP has committed one of the infringements of requirements provided for in paragraphs 1 to 4 of this Article, before withdrawing an authorisation pursuant to paragraph 5, it shall take one or more of the following actions:

- (a) **adopt a decision requiring the IIP to bring the infringement to an end within a specified time limit;**
- (b) **issue public notices;**
- (c) **adopt a decision to impose a fine or a periodic penalty payment according to Article 13g.**

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

- (a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;
- (b) obtained the registration by making false statements or by any other irregular means;
- (c) no longer meets the ~~conditions under which it was registered~~ requirements for authorisation set out in this Article;
- (ca) did not bring the infringement to an end ~~according~~ pursuant to paragraph 4a;
- (d) has seriously and systematically infringed this Regulation.

In case of such a decision the Agency shall also indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942. The Agency may also lay down obligations to enable compliance with the decision to be monitored.

Where the Agency has withdrawn ~~a registration~~ an authorisation to an IIP in accordance with this paragraph, ~~it that withdrawal~~ shall remove that IIP from ~~be published in~~ the register ~~for a period of five years from the date of withdrawal~~.

When the registration has been withdrawn, to ensure continuity of the services provided by the IIP, the IIP concerned shall inform all relevant market participants and in consultation with them, ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs. The Agency shall set a reasonable period for such orderly substitution, taking into account the relevant specificities of the IIP concerned.

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~~ authorisation of an IIP and inform the market participants thereof.

6. The Commission shall, ~~by means of adopt implementing delegated~~ acts in accordance with Article 20 to supplement this Regulation by, ~~specify~~ specifying:

- (a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;
- (b) the content *and any relevant further details* of the inside information published according to paragraph 2 and 3 in such a way as to enable the publication of information required under this Article;
- (c) the concrete organisational requirements for the implementation of ~~paragraph~~ paragraphs 4 and 5.

The first such delegated act shall be adopted by... [6 months after the date of entry into force of this amending Regulation]

~~Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).~~

Article 5

Prohibition of market manipulation

Any engagement in, or attempt to engage in, market manipulation on wholesale energy markets shall be prohibited.

Article 5a (new)

Algorithmic trading

1. A market participant that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an organised market place to which it is connected. The market participant shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.

2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of ~~its~~ the Member State ~~where it is registered pursuant to Article 9(1)~~ and to the Agency.

The national regulatory authority of the Member State ~~of where~~ the market participant is registered pursuant to Article 9(1), 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 system is subject, ~~and~~ the key compliance and risk controls that ~~it has~~ are in place to ensure that the ~~requirement requirements~~ laid down in paragraph 1 of this Article are satisfied and details of the testing of its trading systems.

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of ~~the its home~~ Member State ~~where the market participant is registered pursuant to Article 9(1)~~ and the Agency accordingly.

The national regulatory authority of the ~~home~~ Member State ~~of where~~ the market participant is registered pursuant to Article 9(1) may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.

The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

4. This Article ~~does not apply to transmission system operators~~ and is without prejudice to obligations under Directive (EU) 2014/65. The provisions regarding algorithmic trading contained in this Article do not apply to transmission system operators' areas of activity that use automation, such as activation of balancing energy, insofar those automated processes are addressed by the Commission Regulation (EU) 2017/2195.

Article 6

Technical updating of definitions of inside information and market manipulation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to:

- (a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy; ~~and~~
- (b) update those definitions for the sole purpose of taking into account future developments on wholesale energy markets;

(ba) further specify the notion of inside information defined in point (1) of Article 2, including on the establishment of a non-exhaustive list of relevant intermediate steps in a protracted process in those cases where, by itself, the information meets the criteria laid down in point (1) of Article 2 and in which cases shall be disclosed according to Article 4(1);

(bb) establish a list of examples of market manipulation behaviours that are relevant to the application of this Regulation.

(bc) establish, taking into account national specificities, minimum thresholds for the identification of events which, if they were made public, would likely to significantly affect the prices of the wholesale energy products.

2. The delegated acts referred to in paragraph 1 shall take into account at least:

- (a) the specific functioning of wholesale energy markets, including the specificities of electricity and gas markets, and the interaction between commodity markets and derivative markets;
- (b) the potential for manipulation across borders, between electricity and gas markets and across commodity markets and derivative markets;
- (c) the potential impact on wholesale energy market prices of actual or planned production, consumption, use of transmission, or use of storage capacity; and
- (d) network codes and framework guidelines adopted in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 7

Market monitoring

1. **The Agency ACER** shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation *or attempt thereof*. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.

2. National regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets referred to in paragraph 1. For this purpose national regulatory authorities shall have access to relevant information held by the Agency which it has collected in accordance with paragraph 1 of this Article, subject to Article 10(2). National regulatory authorities may also monitor trading activity in wholesale energy products at national level.

Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the national regulatory authority. In carrying out such market monitoring, the national competition authority or the market monitoring body shall have the same rights and obligations as the national regulatory authority pursuant to the first subparagraph of this paragraph, the second sentence of the second subparagraph of paragraph 3 of this Article, the second sentence of Article 4(2), the first sentence of Article 8(5), and Article 16.

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation *and on its implementation and application*, and make this report publicly available. In such reports the Agency shall assess, *inter alia*, the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

Article 7a (new)

*Tasks and powers of **the Agency ACER** to carry out price assessments and benchmarks*

1. ***As a matter of urgency, ACER The Agency shall produce and publish a daily LNG price assessment and a benchmark starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER the Agency 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(1aa). The price assessment shall where appropriate take into account regional differences and market conditions.

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

1b. The Commission is empowered to adopt delegated acts in accordance with Article 20 to supplement this Regulation by establishing:

(a) rules to define the production and publication of LNG price assessments and benchmarks;

(b) rules for the LNG reference price assessment and benchmark methodology of the Agency ACER.

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

~~*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.*~~

~~*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.*~~

Article 7b (new)

Publication of LNG price assessments and benchmark

~~*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.*~~

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

Article 7c (new)

Provision of LNG market data to the Agency ACER

1. LNG market participants shall submit daily to the Agency ACER the LNG market data as provided for in Article 8(1aa), free of charge, through the reporting channels established by

~~ACER the Agency 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 daily LNG price assessment (18:00 CET).~~

~~2. The Commission is empowered to adopt delegated acts in accordance with Article 20 to supplement this Regulation by ~~may adopt delegated implementing acts~~ specifying the point in time by which LNG market data is to be submitted ~~before the daily to the Agency ACER,~~ and the timing of the publication of the LNG price assessment as referred to in ~~paragraph 1 Article 7a. Those implementing delegated acts shall be adopted in accordance with the examination procedure referred to in Article 29 21(2).~~~~

3. Where appropriate, **ACER the Agency** shall, after consulting the Commission, issue guidance on:

- (a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and
- (b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.

~~3a. Where ACER the Agency finds that an LNG market participant, or a person or authority listed in points (b) to (f) of Article 8(4) on their behalf, has not submitted information required under paragraph 1 of this Article, the Agency may take a measure according to Article 13g.~~

~~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.~~

~~Article 7d (new)~~

~~Business continuity~~

~~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.~~

~~Article 7da (new)~~

~~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 the Agency.*

2. LNG market participants shall provide the Agency 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 the Agency 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. The Agency 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 benchmarks.'

Article 8

Data collection

1. Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. **Market participants shall include information about their**

exposures, detailed by product, including those transactions that occur over the counter.

While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.

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, in accordance with the specifications set out in the Implementing Regulation (EU) No 1348/2014, thereby fulfilling on behalf of market participants their obligations pursuant to in paragraph 1 ~~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.~~

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

2. The Commission shall, by means of implementing acts:

- (a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1 and appropriate *de minimis* thresholds for the reporting of transactions where appropriate;
- (b) adopt uniform rules on the reporting of information which is to be provided in accordance with paragraph 1;
- (c) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing ***transaction reporting systems for monitoring trading activity to detect market abuse.***

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with ~~Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories~~ ***Regulation (EU) 600/2014 or Regulation (EU) 648/2012*** shall not be subject to double reporting obligations relating to those transactions.

Without prejudice to the first subparagraph of this paragraph, the implementing acts referred to in paragraph 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

4. For the purposes of ***paragraphs 1 and 1a***, information shall be provided by:

- (a) the market participant ;
- (b) a third party acting on behalf of the market participant;
- (c) a trade reporting system;

- (d) an organised market *place*, a trade-matching system or other person professionally arranging *or executing* transactions;
- (e) a trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories; or
- (f) a competent authority which has received that information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received that information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.

The information shall be provided through registered reporting mechanism.

5. Market participants shall provide *the Agency ACER* and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, *and with inside information publicly disclosed in accordance with Article 4*, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

6. The Commission shall, by means of implementing acts:

- (a) adopt uniform rules on the reporting of information to be provided in accordance with paragraph 5 and on appropriate thresholds for such reporting where appropriate;
- (b) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting obligations under Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 9

Registration of market participants

1. Market participants entering into transactions which are required to be reported to the Agency *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. ~~or, if they are not established or resident in the Union, Market participants resident or established in a third country shall register with the national regulatory authority of the Member State in which they have declared an office from which they carry out their principal activities. are active.~~ *For the purposes of ensuring compliance with this Regulation, such an office shall, upon request by national regulatory authority of that Member State or from the Agency ACER, provide access to requested information related to the market participant's activities in the Union wholesale energy market.*

A market participant shall register only with one national regulatory authority. Member States shall not require a market participant already registered in another Member State to register again.

The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules.

2. Not later than 3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2), national regulatory authorities shall establish national registers of market participants which they shall keep up to date. The register shall give each market participant a unique identifier and shall contain sufficient information to identify the market participant, including relevant details relating to its value added tax number, its place of establishment, the persons responsible for its operational and trading decisions, and the ultimate controller or beneficiary of the market participant's trading activities.

3. National regulatory authorities shall transmit the information in their national registers to the Agency in a format determined by the Agency. The Agency shall, in cooperation with those authorities, determine that format and shall publish it by 29 June 2012. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency ~~may~~ **shall decide to** make the European register, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed.

4. Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1).

5. Market participants referred to in paragraph 1 shall communicate promptly to the national regulatory authority any change which has taken place as regards the information provided in the registration form.

Article 9a (new)

Authorisation and supervision of the Registered Reporting Mechanisms

1. The operation of an RRM shall be subject to prior authorisation by the Agency in accordance with this Article.

The Agency shall authorise parties as RRM where:

- (a) the RRM is a legal person established in the Union; and***
- (b) the RRM meets the requirements laid down in this Article.***

The Agency shall issue the authorisation to operate as RRM within a reasonable time period and, to the extent possible, within three months following the receipt of the complete 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.

RRMs that have been authorised in accordance with Article 11 of the REMIT Implementing Acts and included in the Agency list of RRM s on [the date of entry into force of this Regulation] shall be treated as compliant and registered as RRM s, until the Agency has taken a decision on the authorisation for those RRM s, following the procedures described in this Article.

An authorised RRM shall comply at all times with the conditions for authorisation referred to in this Article. An authorised RRM shall, without undue delay, notify the Agency ACER of any material changes to the conditions for authorisation.

The Agency shall establish a register of all RRM s in the Union. The register shall be publicly available and shall contain information on the services for which the RRM is authorised and it shall be updated on a regular basis.

2. The Agency shall regularly review the compliance of RRM s with this Regulation. For ~~this~~ that purpose, upon the Agency's request, RRM s shall report ~~on an annual basis~~ about their activities to the Agency.

3. RRM s shall have adequate policies and arrangements in place to report the information required under Article 8 as quickly as possible, and no later than within the timing laid down in the implementing acts adopted pursuant to paragraph 5 of this Article.

RRM s shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.

RRM s shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The RRM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at according to the timing laid down in the implementing acts adopted pursuant to Article 8(2) and (6).

RRM s shall, together with market participants, have systems in place ~~that can~~ 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 ~~re-transmission of any such erroneous~~ to receive a corrected version of such reports.

RRM s shall have systems in place to enable the RRM to detect errors or omissions caused by the RRM itself and to enable the RRM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the Agency.

3a. Where the Agency finds that an IIP has committed one of the infringements of requirements provided for in paragraphs 1 to 4 of this Article, before withdrawing an authorisation pursuant to paragraph 5, it shall take one or more of the measures in accordance with Article 13g. ~~the Agency finds that an RRM has committed one of the infringements of requirements provided for in paragraphs 1 to 3 of this Article, it shall take one or more of the following actions:~~

- ~~(a) adopt a decision requiring the RRM to bring the infringement to an end within a specified time limit;~~*
- ~~(b) issue public notices;~~*
- ~~(c) adopt a decision to impose a fine or a periodic penalty payment according to Article 13g.~~*

4. The Agency may withdraw the authorisation of an RRM where RRM:

- (a) does not make use of the authorisation within 18 months, expressly renounces the authorisation or has provided no services for the preceding 18 months;*
- (b) obtained the authorisation by making false statements or by any other irregular means;*
- (c) no longer meets the conditions under which it was authorised;*
- (d) has seriously and systematically infringed this Regulation.*

In case of such a decision the Agency shall also indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942. The Agency may also lay down obligations to enable compliance with the decision to be monitored.

Where the Agency has withdrawn an authorisation to an RRM in accordance with this paragraph, it shall remove that RRM from the register.

An RRM whose authorisation has been withdrawn, to ensure continuity of the services provided by the RRM, shall inform all relevant market participants and, in consultation with them, 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 of the RRM concerned.

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

5. The Commission shall adopt delegated acts in accordance with Article 20 to supplement this Regulation by specifying: ~~By ... [6 months after the date of entry into force of this amending Regulation], the Commission shall by means of adopt implementing delegated acts, specifying specify:~~

- (a) the means by which an RRM shall comply with the information obligation referred to in paragraph 1; and*
- (b) the concrete organisational requirements for the implementation of paragraphs 2 and 3.*

The first such delegated act shall be adopted by ... [6 months after the date of entry into force of this amending Regulation].

Article 10

Sharing of information between the Agency and other authorities

1. **The Agency ACER** shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with **the Commission**, national regulatory authorities, competent financial **market** authorities of the Member States, national competition authorities, ESMA and other relevant authorities **at Union level**. Before establishing such mechanisms, the Agency shall consult with those authorities.

1a. National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the competent financial market authorities, the national competition authorities, the national tax authorities and EUROFISC and other relevant national authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those parties.

2. The Agency shall give access to the mechanisms referred to in paragraph 1 **of this Article** only to authorities which have set up systems enabling the Agency to meet the requirements of Article 12(1).

2a. National regulatory authorities shall give access to the mechanisms referred to in paragraph 1a of this Article only to authorities which have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1).

3. Trade repositories registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories shall make relevant information regarding wholesale energy products and derivatives of emissions allowances collected by them available to the Agency.

ESMA shall transmit to the Agency reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC and under applicable Union legislation on derivative transactions, central counterparties and trade repositories. Competent authorities receiving reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC shall transmit those reports to the Agency.

The Agency and authorities responsible for overseeing trading in emissions allowances or derivatives relating to emissions allowances shall cooperate with each other and establish appropriate mechanisms to provide the Agency with access to records of transactions in such allowances and derivatives where those authorities collect information on such transactions.

Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁴⁾ or the obligations of the Agency, when fulfilling its responsibilities, relating to its processing of personal data under Regulation

(EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁵⁾.

Article 12

Operational reliability

1. The Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2) and Articles 8 and 10. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems.

The Commission, national regulatory authorities, competent financial authorities of the Member States, *national tax authorities and EUROFISC*, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 and shall take steps to prevent any misuse of such information *including according to applicable data protection laws*.

The Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures.

2. *The Agency shall develop and maintain a reference centre of information on Union wholesale energy market data*. Subject to Article 17, the Agency ~~may decide to~~ *shall* make publicly available parts of the information which it possesses *in an accessible format, including information regarding the trading of over the counter wholesale energy contracts, power purchase agreements and contracts for difference*, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. ~~The Agency ACER shall not be prevented from publishing~~ *may publish information on organised market places, IIPs, RRM according to in accordance with applicable data protection laws, excluding commercially sensitive elements*.

The Agency shall make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements.

Information shall be published or made available in the interest of improving transparency of wholesale energy markets and provided it is not likely to create any distortion in competition on those energy markets.

The Agency shall disseminate information in a fair manner according to transparent rules which it shall draw up and make publicly available.

The Agency may cooperate in areas of common interest with supervisory authorities in third countries and international organisations which can provide data, information and expertise, methodologies of data collection, analysis and assessment which are of mutual interest and which are necessary for the successful completion of the Agency's work.

*Article 13***Implementation of prohibitions against market abuse**

1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligations set out in Article 4, **7c, 8, 9 and 15** are applied.

National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation thereto, irrespective of where the market participant registered pursuant to Article 9(1) carrying out those acts is resident or established.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function by 29 June 2013. Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

- (a) directly;
- (b) in collaboration with other authorities; ~~or~~
- (c) by application to the competent judicial authorities; ~~or~~
(ca) by recommendation of the Agency.

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).

2. The investigatory and enforcement powers referred to in paragraph 1 shall be limited to the aim of the investigation. They shall be exercised in conformity with national law and include the right to:

- (a) have access to any relevant document in any form, and to receive a copy of it;
- (b) demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal;
- (c) carry out on-site inspections
- (d) require existing telephone and existing data traffic records;
- (e) require the cessation of any practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof;
- (f) request a court to freeze or sequester assets;
- (g) request a court or any competent authority to impose a temporary prohibition of professional activity.

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~~ shall, 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 ~~and 13b to 13g~~.

3a. In sufficient time before exercising the powers referred to in paragraph 3 within the jurisdiction of a Member State where the acts that the Agency reasonably suspects to be in breach of this Regulation are carried out, the Agency shall inform the national regulatory authority and other concerned authorities of that Member State. The Agency shall exercise its powers in that jurisdiction, unless the national regulatory authority objects on the grounds that it:

- a) has formally opened or is conducting an investigation on the same facts; or**
- b) has conducted an investigation on the same facts and determined the existence or the absence of a breach¹.**

3a. In exercising the powers referred to in paragraph 3, the Agency shall take into account the investigations already in progress or already carried out in respect of the same acts by a national regulatory authority pursuant to this Regulation. The Agency shall as well take into account ~~as~~ the cross-border impact of the investigation.

4. The Agency ~~may~~ shall exercise its powers to ensure that the prohibitions set out in Articles 3 ~~and Article 5~~ and the obligations set out in Article 4 are applied where:

- (a) acts related to the allegation are being or have been carried out on wholesale energy products for delivery in at least ~~three~~ two Member States; or**
- (b) acts related to the allegation are being or have been carried out on wholesale energy products for delivery in at least ~~two~~ one Member States 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 Article 9(1); or**
- (c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), ~~does has~~ not immediately take the necessary measures in order duly substantiated its refusal to comply with the request from the Agency referred to in Article 16(4) point (b) in cases having a cross-border dimension; or**
- (d) upon the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least ~~three~~ Member States competent national regulatory authority request, as regards the acts which, even if not falling within points (a), (b) or (c), have a cross-border dimension.**

4a. The Agency shall exercise its powers to ensure that the obligations set out in Article 4 are applied where the obligation to publish is related to information as defined in Article

¹ The addition reflects the position of European energy regulators – the Council of European Energy Regulators in its statement warned that ACER should only exercise its powers within the jurisdiction of a Member State in specific cross-border cases where the NRA (i) is not itself conducting or has conducted investigations and (ii) has notified ACER that it does not intend for any reasons to carry out such investigations pertaining to the acts reasonably suspected in breach of this Regulation by ACER.

2(1) of this Regulation that is likely to significantly affect the prices of wholesale energy products for delivery in at least 2 Member States.

5. The Agency ~~may~~ shall 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~~ two Member States.

~~*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.*~~

7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, 4a and 5 of this Article, 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 shall provide the relevant national regulatory authorities with the full report and the case file containing all incriminating and exculpatory evidence relevant to the report, and may ~~recommend~~ request certain follow-up to the relevant national regulatory authorities, including, where appropriate, a suggestion about which measures could be suitable to be considered by the relevant national authorities, and, where necessary, inform the Commission.

7a. The Agency shall, on a regular basis and in any event at least once a year, submit the reports that it has drawn up, in aggregate form, to the European Parliament and to the Council.

Article 13a (new)

On-site inspections by the Agency

1. The Agency shall prepare and conduct on-site inspections in close cooperation and coordination with the relevant authorities of the Member State concerned.

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.

3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.

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~~ is not about to start an inspection, or is not in the process of carrying out an inspection at any premises of the person subject to the investigation, in which case it shall invite the Agency to join. The national authorities must respond to the Agency's notice as soon as possible.

5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.

6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.

7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article. Officials of the national regulatory authority may also attend the on-site inspection upon request.

8. Where the officials of, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.

9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires authorisation by a judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure.

10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:

- (a) that the decision of the Agency is authentic; and**
- (b) that any measures to be taken are proportionate and not arbitrary or excessive having regard to the subject matter of the inspection.**

For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the

investigation. By way of derogation from Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.

Article 13b (new)

Request for information

1. At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:

- (a) refer to this Article as the legal basis for the request;*
- (b) state the purpose of the request;*
- (c) specify what information is required, and following which data format;*
- (d) set a time-limit, proportionate to the request, within which the information is to be provided;*
- (e) inform the person that the reply to the request for information shall not be incorrect or misleading.*

2. For the purpose of information requests as referred to in paragraph 1, the Agency shall have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.

3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.

3a. Where system operators consider that requested information under this Regulation would risk undermining the performance of their tasks, and in particular the task of efficiently balancing the system, they may object to the disclosure of that information. The system operator concerned must then duly justify its decision. Upon the information provided by the system operator, the Agency shall determine whether the objection is justified.

4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency or the national regulatory authority of the Member State concerned shall afford ~~them~~ the officials, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the obligation referred to in paragraph 3, including through the imposition, of penalties in accordance with applicable national law. The Agency may also take one or more of the measures in accordance with Article 13g.

5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.

6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the ~~concerned~~ Member States **concerned.**

Article 13c (new)

Procedural guarantees

1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:

- (a) the right not to make self-incriminating statements;**
- (b) the right to be assisted by a person of choice;**
- (c) the right to use any of the official languages of the Member State where the on-site inspection takes place;**
- (d) the right to comment on facts concerning them;**
- (e) the right to receive a copy of the record of interview and either approve it or add observations.**

2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.

3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.

Article 13ca (new)

Power to take statements

1. In order to carry out the tasks 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 national regulatory authority of the Member State in whose territory the interview takes place. The officials of the national regulatory authority of that Member State may assist the officials and other accompanying persons authorised by the Agency to conduct the interview.

Article 13d (new)

Mutual assistance

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

13e (new)

Duties of the investigating officer

- 1. Where, in carrying out its duties under this Regulation, the Agency has reasonable grounds to suspect the possible existence of facts liable to constitute a breach in the cases referred to in Article 13(4), (4a) and (5) the Agency shall appoint an independent investigating officer within the Agency to investigate the matter. The appointed officer shall not be involved or have been involved in the direct or indirect supervision of the person concerned and shall perform his or her functions independently from the Agency.***
- 2. The investigating officer shall investigate the alleged breach, taking into account any comments submitted by the persons subject to investigation, and shall submit a complete file with his or her findings to the Agency. In order to carry out his or her tasks, the investigating officer may exercise the powers to conduct on-site inspections, request information and take statements in accordance with Articles 13a, 13b, 13c and 13ca. When carrying out his or her tasks, the investigating officer shall have access to all documents and information collected by the Agency in its supervisory activities.***
- 3. Upon completion of the investigation and before submitting the file with the findings, the investigating officer shall give the persons subject to the investigation the opportunity to be heard on the matters being investigated. The investigating officer shall base his or her findings only on facts on which the persons subject to investigation have had the opportunity to comment.***
- 4. When submitting the file with his or her findings to the Agency, the investigating officer shall notify the persons who are subject to the investigation. The persons subject to the investigation shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to the file shall not extend to confidential information affecting third parties.***

13f (new)

Decision making

- 1. On the basis of the file containing the investigation officer's findings and after having heard the persons subject to the investigation, the Agency shall decide if one or more breaches referred to in Articles 13(4) and 13(5) have been committed, and in such case, shall impose the measures pursuant to Article 13g.***
- 2. The investigation officer shall not participate in the Agency's deliberations or in any other way intervene in the Agency's decision-making process.***

3. The Agency shall refer matters for criminal prosecution to the relevant national authorities where, in carrying out its tasks under this Regulation, it finds that there are serious indications of the possible existence of facts liable to constitute a criminal offence.

13g (new)

Enforcement measures by the Agency

1. Where the Agency finds that a breach of the prohibitions and obligations referred to in Articles 4a(1) to (4), 7c(1), 9a(1),(2) and (3), 13b(1) and (3), and in accordance with Article 13(4), (4a) and (5) has been committed, it shall take one or more of the following measures:

(a) adopt a decision requiring the person to bring the breach to an end;

(b) issue public warnings or notices;

(c) adopt a decision imposing a fine or a periodic penalty payment; or

2. The fines and periodic penalty payments referred to in paragraph 1 shall be effective, proportionate and dissuasive. They shall be set taking account of the gravity of the case, the activity to which the infringement pertains and the economic capacity of the legal or natural person concerned.

3. Without undue delay, the Agency shall notify any measure taken pursuant to paragraph 1 to the person responsible for the breach, and shall communicate it to the concerned national regulatory authorities and to the Commission. The Agency shall also publicly disclose any such measure on its website.

4. The Commission shall adopt delegated acts in accordance with Article 20 to supplement this Regulation by specifying:

(a) detailed criteria and a detailed methodology for establishing the amounts of the fines and periodic penalty payments;

(b) procedures for the collection of the fines and periodic penalty payments.

The first such delegated act shall be adopted by 1 March 2024.

13h (new)

Rights of defence and review of the Agency's decisions

1. The Agency shall base any decisions referred to in Article 13g only on findings on which the persons subject to the proceedings have had an opportunity to comment.

2. The rights of defence of the persons subject to investigation shall be fully respected in the proceedings. They shall be entitled to have access to the file, subject to the legitimate interest of other persons in the protection of their business secrets. The right of access to

the file shall not extend to confidential information or the Agency's internal preparatory documents.

3. Decisions referred to in Article 13g are subject to Articles 28 and 29 of Regulation (EU) 2019/942.

Article 14

Right of appeal

Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 15

Obligations of persons professionally arranging or executing transactions

1. 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, whether placed on or outside a trading venue*, might breach Article 3, 4 or 5 shall notify *the Agency and the relevant* national regulatory authority without further delay *but no later than four weeks from the occurrence of the suspicious event*.

1a. Any person professionally executing transactions under Article 16 of Regulation (EU) No 596/2014, that is also executing transactions in wholesale energy products that are not financial instruments, and who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, whether placed on or outside a trading venue, might breach Article 3, 4 or 5 shall notify the Agency and to the relevant national regulatory authority without further delay but no later than four weeks from the occurrence of the suspicious event.

1b. The persons referred to in paragraph 1 and 1a ~~professionally arranging or executing transactions in wholesale energy products~~ shall establish and maintain effective arrangements, *systems* and procedures to:

- (a) identify *possible* breaches of Article 3, 4 or 5;
- (b) *guarantee that their employees carrying out surveillance activities for the purpose of this Article are preserved from any conflict of interest and act in an independent manner;*
- (ba) prevent, detect and report suspicious orders and transactions.*

Without prejudice to Article 22 of Regulation (EU) No 596/2014, persons professionally arranging transactions shall be subject to the rules of notification of the Member State in which they are registered or have their head office. The notification shall be addressed to the competent authority of that Member State.

By 31 December 2023 and every year thereafter the Agency, in cooperation with national regulatory authorities, shall issue and make publicly available a report on the implementation of Article 15, in particular on their:

(i) supervision of the arrangements, systems and procedures to detect suspicious activity and report suspicious transactions;

(ii) supervision of persons professionally arranging transactions regarding their systems and arrangements to detect suspicious activity and report suspicious transactions;

(iii) response to poor quality and non-reporting of suspicious transactions and reporting as well as their related enforcement and sanctions activity;

(iv) analysis of suspicious transactions and reporting;

(v) cross-border exchange of suspicious transactions and reporting;

(vi) resources for supervision in the framework of this Article.

Article 16

Cooperation at Union and national level

1. The Agency shall aim to ensure that national regulatory authorities carry out their tasks under this Regulation in a coordinated and consistent way.

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 insider trading and market manipulation set out in Articles 3 and 5 respectively*, as appropriate.

National regulatory authorities shall cooperate with the Agency and with each other, including at regional level, for the purpose of carrying out their duties in accordance with this Regulation.

National regulatory authorities, competent financial authorities, ~~and~~ the national competition authority *and the national tax authority* in a Member State ~~may~~ *shall* establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law. *Such forms of cooperation shall ensure reports of possible breaches of this Regulation are handled within an appropriate timeframe as to allow proper investigation.*

2. National regulatory authorities shall without delay inform the Agency in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Member State or in another Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.

No later than 30 days before adopting a final decision finding ~~on a breach~~ an infringement of this Regulation, national regulatory authorities shall inform the Agency and provide it

with a summary of the case in a language of the Member State concerned and, to the extent possible, also in English ~~and the envisaged decision~~. National regulatory authorities shall provide their final decisions to the Agency within seven days of their adoption. The Agency shall publish such decisions on its website in accordance with applicable data protection law and shall maintain a public list of such decisions ~~under this Regulation~~, including the date of the decision, the name of the natural or legal person ~~sanctioned~~ subject to the decision, the ~~Article of this Regulation~~ provision that has been ~~breached~~ infringed and the ~~sanction applied~~ penalty imposed. For the purpose of that publication, national regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.

3. In order to ensure a coordinated and consistent approach to market abuse on wholesale energy markets:

- (a) national regulatory authorities shall *process reports of possible breaches of this Regulation within a maximum time of one year, and* inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;
- (b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive;
- (c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;
- (d) national regulatory authorities shall inform the national competition authority of their Member State, the Commission and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law;
- (e) *the Agency and the national regulatory authorities shall inform the competent national tax authorities and EUROFISC where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a tax fraud.*

4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Agency suspects that there has been a breach of this Regulation, it shall have the power:

- (a) to request one or more national regulatory authorities to supply any information related to the suspected breach;
- (b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision

as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;

(c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which Member State the breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Member States in the investigatory group.

5. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

- (a) compliance might adversely affect the sovereignty or security of the Member State addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or
- (c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In any such case, the national regulatory authority shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, rendering all necessary assistance. The investigatory group shall be subject to coordination by the Agency.

6. The last sentence of Article 15(1) of Regulation (EC) No 713/2009 shall not apply to the Agency when carrying out its tasks under this Regulation.

Article 16a (new)

Delegation of tasks and responsibilities

1. National regulatory authorities may, with the consent of the delegate and only if this would not result in disproportionate administrative burden for market participants, delegate tasks and responsibilities to the Agency or 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.

The Agency may stimulate and facilitate the delegation of tasks and responsibilities between competent national regulatory authorities by identifying those tasks and responsibilities that can be delegated or jointly exercised and by promoting best practices.

The delegation of responsibilities shall result in the reallocation of competences laid down in this Regulation. The law of the delegate authority shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.

2. The national regulatory authorities shall inform the Agency of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest one month after informing the Agency.

3. The Agency may give an opinion on the intended delegation agreement within one month of being informed.

4. The Agency shall publish, by appropriate means, any delegation agreement as concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.

Article 16b (new)

Guidelines and recommendations

*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 3, 4, 4a, 5, 5a, 8, 9 and 9a. **The national regulatory authorities and market participants are encouraged to make every effort to comply with those guidelines and recommendations.***

*2. The Agency shall, ~~where appropriate within an adequate and realistic timeframe,~~ conduct **appropriate** public consultations **with all relevant market participants** 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.*

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

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

*5. The Agency shall publish the information that a national regulatory authority does not comply or does not intend to comply with that guideline or recommendation. The Agency may also decide to publish the reasons provided by the national regulatory authority for not complying with that guideline or recommendation. **The national regulatory authority may***

ask the Agency not to make this information public if it could compromise the exercise of the tasks of the national regulatory authority. The Agency shall ultimately decide whether to make this information public. The national regulatory authority shall receive advanced notice of such publication.

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

7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.

Article 17

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2, 3 and 4.
2. The obligation of professional secrecy shall apply to:
 - (a) persons who work or who have worked for the Agency;
 - (b) auditors and experts instructed by the Agency;
 - (c) persons who work or who have worked for the national regulatory authorities or for other relevant authorities;
 - (d) auditors and experts instructed by national regulatory authorities or by other relevant authorities who receive confidential information in accordance with this Regulation.
3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant ~~or market place~~ cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.
4. Without prejudice to cases covered by criminal law, the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions. Other authorities, bodies or persons may use that information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions. The authority receiving the information may use it for other purposes, provided that the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons communicating information consent thereto.
5. This Article shall not prevent an authority in a Member State from exchanging or transmitting, in accordance with national law, confidential information provided that it has not

been received from an authority of another Member State or from the Agency under this Regulation.

Article 18

Penalties

1. The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).

The Member States shall notify, *in detail*, those provisions to the Commission *and to the Agency* ~~by 29 June 2013 at the latest~~ and shall notify it without delay of any subsequent amendment affecting them.

~~Member States shall provide that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.~~

By 1 June 2025 the Commission shall assess the effectiveness of introducing criminal penalties by Member States for intentional and serious cases of market abuse in the Union wholesale energy markets and submit a report to the European Parliament and to the Council. Where appropriate, the assessment shall be followed up by a legislative proposal

2. Member States shall, in accordance with national law, and the *ne bis in idem* principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:

- (a) adopt a decision requiring the person to bring the breach to an end;
- (b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;
- (c) issue public warnings or notices;
- (d) adopt a decision imposing periodic penalty payments;
- (e) adopt a decision imposing administrative pecuniary sanctions;

in respect of legal persons, maximum administrative pecuniary sanctions of at least:

- i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;*

- ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;*
- iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.*

in respect of natural persons, maximum administrative pecuniary sanctions of at least:

- i. for breaches of Articles 3 and 5, EUR 5 000 000;*
- ii. for breaches of Article 4 and 15, EUR 1 000 000;*
- iii. for breaches of Article 8 and 9, EUR 500 000.*

Notwithstanding paragraphs (e), the amount of the fine shall not exceed 20 % of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed 20 % of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.

3. Member States shall ensure that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.

3a. By [three years after entry into force of this amending Regulation] and every three years thereafter, the Commission shall assess whether penalties for breaches of EU rules are legislated for and applied consistently across Member States and submit a report to the European Parliament and the Council.

Article 19

International relations

In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries in particular with those impacting the Union energy wholesale market in order to promote the harmonisation of the regulatory framework. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries.

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of 5 years from 28 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-

year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

5. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.
2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 21a

Report and review

By 1 June 2027, and every five years thereafter, the Commission, in consultation with relevant stakeholders, shall assess the application of this Regulation, in particular as regards the impact of this Regulation on market behaviour, market participants, liquidity, reporting requirements, including on LNG market data, and the level of administrative burden for market participants, including the potential barriers to entry for new market participants, as well as the Agency's performance in relation to its objectives, mandate and task. On the basis of that assessment, the Commission shall draw up a report and submit it without undue delay to the European Parliament and to the Council. The report shall be accompanied, where appropriate, by a legislative proposal.

Article 22

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Paragraph 1, the first subparagraph of paragraph 3, and paragraphs 4 and 5 of Article 8 shall apply with effect from 6 months after the date on which the Commission adopts the relevant implementing acts referred to in paragraphs 2 and 6 of that Article.

Article [...] shall apply from [...]

Article 2 (Amendments to Regulation (EU) 2019/942)

~~Art 6(8). — Upon the request of a regulatory authority, ACER may provide operational assistance to that regulatory authority regarding investigations pursuant to Regulation (EU) No 1227/2011.~~

Art 12. In order to effectively monitor wholesale market integrity and transparency, ACER, in close cooperation with the regulatory authorities and other national authorities, shall:

(a) monitor wholesale markets, collect and share data and establish a European register of market participants in accordance with Articles 7 to 12 of Regulation (EU) No 1227/2011;

(b) issue recommendations to the Commission in accordance with Article 7 of Regulation (EU) No 1227/2011;

(c) coordinate investigations pursuant to Article 16(4) of Regulation (EU) No 1227/2011;

(d) have the power to impose periodic penalty payments and fines for breaches referred to in Articles 4a(1) to (4), 7c(1), 9a(1),(2) and (3), 13b(1) and (3), and in accordance with Article 13(4), (4a) and (5) of Regulation (EU) No 1227/2011.

Art 32(1) 1. Fees shall be due to ACER for ~~the following~~:

~~(a) (a) requesting an exemption decision pursuant to Article 10 of this Regulation and for decisions on cross-border cost allocation provided by ACER pursuant to Article 12 of Regulation (EU) No 347/2013;~~

~~(b) collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Article 4 and 4a of Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also cover the costs of ACER for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.~~

Article 3 (Amendments to Commission Implementing Regulation (EU) No 1348/2014)

Article 7a (new)

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 benchmarks.²

Article 4

This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Strasbourg,

For the European Parliament
The President

For the Council
The President

Recitals and citations

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 194(2) 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 ... ²,
 - having regard to the opinion of the Committee of the Regions of ... ³,
 - having regard to Rule 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) 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 **abuse manipulation**, Regulation (EU) No 1227/2011 should be amended to further increase **insufficient** transparency and **strengthen** monitoring capacities, **and thus contributing to the**

² OJ C 0, 0.0.0000, p. 0.

³ OJ C 0, 0.0.0000, p. 0.

stabilisation of energy prices and protecting consumers, 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.

- (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 Council⁴, 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.
- (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 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. ***The Commission should have the ability, by means of delegated act, to further elaborate the definition of inside information. There should be a contact point at the Agency for market participants seeking clarification on whether or not a specific information would constitute inside information according to this Regulation and the relevant delegated act.***
- (4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.
- (5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to

⁴ 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).

Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.

- (6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the 'Agency' or 'ACER') should be able to make that information available *in an accessible format* to market participants and the wider public with a view to contributing to enhanced market knowledge. This should include the possibility for ~~ACER~~ *the Agency* to publish information on organised market places, IIPs, RRM according to applicable data protection laws in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.
- (6a) Where information is not, or no longer, sensitive from a commercial viewpoint, the Agency should be able to make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements, with a view to contributing to enhanced market knowledge. This will help build confidence in the market and foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make the information available for scientific and for transparency purposes in a fair and transparent manner.*
- (6b) Market participant, within the meaning of Regulation (EU) No 1227/2011, should be understood as any person, including transmission system operators, distribution system operators, storage system operators and LNG system operators, who enters into transactions in one or more wholesale energy markets. However, when distribution system operators, storage system operators and LNG system operators do not enter into transactions with regard to wholesale energy products, they should become exclusively subject to the relevant disclosure obligations under Article 4 and Article 8(5) of Regulation (EU) No 1227/2011.*
- (6c) Market participants should report to the Agency the data regarding the contracts for the supply of electricity or natural gas and the derivatives related to electricity and natural gas, which may result in an effective physical delivery in the Union.*
- (7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 shall be duly authorized pursuant to the requirements of that Directive.
- (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.
- (9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of utmost importance to ensure effective monitoring and detection of potential breaches to achieve the objective of Regulation (EU) No 1227/2011. Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for it to effectively carry out its tasks and functions. *The Agency should in turn contribute to the establishment of a common Union energy data strategy.*

- (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, **explicitly and implicitly allocated transmission capacity**, 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 report suspected breaches.~~
- (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. **Market participants may, only in addition, continue using other channels, including market participants' websites, to disclose the inside information, provided that equal conditions on timelines and accessibility are ensured.** To ensure trust in the IIPs they should be authorised and registered, **and the Agency's supervisory powers over IIPs should be extended to include the power to issue fines and public notices. 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 IIP in time and in line with the requested format.**
- (12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRMs should be authorised by the Agency. The RRMs should at all times comply with the conditions for authorisation and data protection law. The Agency should also establish a register of all RRMs in the Union. **The Agency should have the power to withdraw such authorisation in certain cases. The Agency's supervisory powers over RRMs should be extended to include the power to issue fines and public notices.**
- (13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting.
- (13a) The reporting obligations on market participants should be minimised by collecting the required information or parts thereof from existing sources where possible.**
- (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, **when they are not providing arrangement services to third parties**, and shared order-book providers should **not** be considered **as to be** persons professionally arranging transactions.
- (15) Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management foresees the possibility of third country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market

coupling operator uses a specific algorithm to match bids and offers in an optimal manner, this may result in orders to trade being placed in a third country participating in the Union single day-ahead and intraday coupling but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product pursuant to this Regulation.

- (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 benchmark**. The price assessment **and benchmark** should be undertaken based on all transactions pertaining to **relevant** LNG deliveries ~~into~~ to the Union. ~~The Agency~~ **ACER** should be empowered to collect this market data from all participants active in LNG deliveries ~~to~~ **into** the Union. All such participants should be obliged to report **a record** ~~of~~ of their LNG market data to ~~the Agency~~ **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. ~~ACER~~ **The Agency should minimise the burden imposed on LNG market participants by optimising the collection process of the relevant data through the existing sources and reporting mechanisms already in place in accordance with Regulation (EU) No 1227/2011. Where the Agency finds that an LNG market participant has not submitted required information, it could decide to impose fines.**
- (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 burden on market participants,** national regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority **or to the Agency, with the delegates' prior approval**. 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.
- (17a) To make regulators more effective and restore public confidence in institutions, the rules on performance of duties within national regulators and the Agency must ensure that conflicts of interest are avoided as far as possible, especially in connection with the performance of certain duties.**
- (18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect

the type of the breaches, taking into account the *ne bis in idem* principle. ***At the same time, Member States are able to inter alia provide for effective, proportionate and dissuasive criminal sanctions, considering that they are an effective tool in the financial sector.*** Administrative sanctions, penalty payments and supervisory measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy market requires a consistent approach among national regulatory authorities, ***which should be provided with the appropriate financial, human and technical resources in order to adequately fulfil their tasks.***

- (19) To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviours are increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.
- (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 ***that this*** type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone, ***in particular where the national regulatory authorities are not already taking action.***
- (21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases requires involvement of the Agency, in particular in more integrated energy market. Since the entry into force of Regulation (EU) No 1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011, ***including by appointing an independent investigating officer within the Agency with powers to conduct on-site inspections, request information and conduct interviews.*** The Agency should carry out such investigations in cooperation with the national regulatory authorities with the purpose of supporting and complementing their enforcement activities. Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.
- (21a) To fulfil the new obligations assigned to it, in particular those relating to enhanced investigatory and sanctioning powers in cross-border cases, the Agency should have adequate staff and the ability to hire additional personnel, if necessary.***
- (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 subject to the investigation should be safeguarded exchanged in accordance with applicable Union data protection rules.

- (23) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,

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