



# Procedure file

Basic information	
COD - Ordinary legislative procedure (ex-codecision procedure) Regulation	2010/0363(COD) Procedure completed
Wholesale energy market integrity and transparency	
Subject 2 Internal market, single market 2.50.03 Securities and financial markets, stock exchange, CIUTS, investments 2.50.10 Financial supervision 2.60 Competition 2.60.01 Trade restrictions, concerted practices, dominant positions 3.60.03 Gas, electricity, natural gas, biogas 3.60.15 Cooperation and agreements for energy 8.40.08 Agencies and bodies of the EU	

Key players				
European Parliament	Committee responsible	Rapporteur	Appointed	
	<b>ITRE</b> Industry, Research and Energy		15/02/2011	
		ALDE <a href="#">CHATZIMARKAKIS Jorgo</a>		
		Shadow rapporteur		
		PPE <a href="#">GYÜRK András</a>		
		S&D <a href="#">SWOBODA Hannes</a>		
		Verts/ALE <a href="#">TURMES Claude</a>		
		ECR <a href="#">SZYMAŃSKI Konrad</a>		
	Committee for opinion	Rapporteur for opinion	Appointed	
	<b>IMCO</b> Internal Market and Consumer Protection		10/02/2011	
		PPE <a href="#">TRZASKOWSKI Rafal</a>		
	<b>ECON</b> Economic and Monetary Affairs		18/01/2011	
		S&D <a href="#">GOEBBELS Robert</a>		
Council of the European Union	Council configuration	Meeting	Date	
	<a href="#">Environment</a>	<a href="#">3118</a>	10/10/2011	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3097</a>	10/06/2011	
	<a href="#">Transport, Telecommunications and Energy</a>	<a href="#">3072</a>	28/02/2011	
European Commission	Commission DG	Commissioner		
	<a href="#">Energy</a>	OETTINGER Günther		

Key events			
08/12/2010	Legislative proposal published	<a href="#">COM(2010)0726</a>	Summary
16/12/2010	Committee referral announced in Parliament, 1st reading		
28/02/2011	Debate in Council	<a href="#">3072</a>	Summary

10/06/2011	Debate in Council	<a href="#">3097</a>	Summary
12/07/2011	Vote in committee, 1st reading		Summary
01/08/2011	Committee report tabled for plenary, 1st reading	<a href="#">A7-0273/2011</a>	
13/09/2011	Debate in Parliament		
14/09/2011	Results of vote in Parliament		
14/09/2011	Decision by Parliament, 1st reading	<a href="#">T7-0376/2011</a>	Summary
10/10/2011	Act adopted by Council after Parliament's 1st reading		
25/10/2011	Final act signed		
25/10/2011	End of procedure in Parliament		
08/12/2011	Final act published in Official Journal		

### Technical information

Procedure reference	2010/0363(COD)
Procedure type	COD - Ordinary legislative procedure (ex-codecision procedure)
Procedure subtype	Legislation
Legislative instrument	Regulation
Legal basis	Treaty on the Functioning of the EU TFEU 194-p2
Other legal basis	Rules of Procedure EP 159
Stage reached in procedure	Procedure completed
Committee dossier	ITRE/7/04837

### Documentation gateway

Document attached to the procedure		<a href="#">SEC(2010)1510</a>	08/12/2010	EC	
Legislative proposal		<a href="#">COM(2010)0726</a>	08/12/2010	EC	Summary
Document attached to the procedure		<a href="#">SEC(2010)1511</a>	08/12/2010	EC	
Economic and Social Committee: opinion, report		<a href="#">CES0542/2011</a>	16/03/2011	ESC	
Committee draft report		<a href="#">PE460.835</a>	23/03/2011	EP	
Amendments tabled in committee		<a href="#">PE464.684</a>	27/04/2011	EP	
Amendments tabled in committee		<a href="#">PE464.685</a>	05/05/2011	EP	
Committee opinion	<b>ECON</b>	<a href="#">PE460.918</a>	16/05/2011	EP	
Committee opinion	<b>IMCO</b>	<a href="#">PE462.549</a>	25/05/2011	EP	
Document attached to the procedure		N7-0090/2011 <a href="#">OJ C 279 23.09.2011, p. 0020</a>	21/06/2011	EDPS	Summary
Amendments tabled in committee		<a href="#">PE469.724</a>	01/07/2011	EP	
Committee report tabled for plenary, 1st reading/single reading		<a href="#">A7-0273/2011</a>	02/08/2011	EP	

Text adopted by Parliament, 1st reading/single reading	<a href="#">T7-0376/2011</a>	14/09/2011	EP	Summary
Draft final act	<a href="#">00034/2011/LEX</a>	26/10/2011	CSL	
Commission response to text adopted in plenary	SP(2011)8584	09/11/2011	EC	
Document attached to the procedure	<a href="#">COM(2013)0431</a>	18/06/2013	EC	

#### Additional information

National parliaments	<a href="#">IPEX</a>
European Commission	<a href="#">EUR-Lex</a>

#### Final act

[Regulation 2011/1227](#)  
[OJ L 326 08.12.2011, p. 0001](#) Summary

Final legislative act with provisions for delegated acts

## Wholesale energy market integrity and transparency

**PURPOSE:** to provide a harmonised framework to ensure energy market transparency and integrity.

**PROPOSED ACT:** Regulation of the European Parliament and of the Council.

**BACKGROUND:** it is important to ensure that consumers can have confidence in the integrity of electricity and gas markets and that prices set on wholesale energy markets reflect a fair interplay between supply and demand. Unless effectively addressed, the potential for unfair trading practice undermines public trust, deters investment, increases volatility of energy prices and may lead to higher energy prices in general.

To date energy market monitoring practices have been Member State and sector specific. Depending on the overall market framework and regulatory situation, this can result in trading activities being subject to multiple jurisdictions with monitoring carried out by several different authorities, possibly located in different Member States. This can result in a lack of clarity as to where responsibility rests and even to a situation where no such monitoring exists.

Energy markets are increasingly interlinked across the Union. Market abuse in one Member State affects wholesale prices for electricity and gas across national borders. Therefore the concern to ensure the integrity of markets cannot be a matter only for individual Member States.

In December 2007, the Commission requested the advice of Committee of European Securities Regulators (CESR) and the European Regulators Group for Electricity and Gas (ERGEG) on issues relating to wholesale energy market transparency and market abuse.

In their recommendation, they confirmed that the scope of existing legislation may not properly address market integrity issues on the electricity and gas markets and recommended the consideration of an appropriate legislative framework in the energy sector, preventing market abuse.

**IMPACT ASSESSMENT:** this proposal is accompanied by an Impact Assessment which examines the options for ensuring energy market integrity and transparency in detail.

**LEGAL BASE:** Article 194(2) of the Treaty on the Functioning of the European Union (TFEU). This Article states that in the context of the establishment and functioning of the internal market Union policy on energy shall aim, inter alia, to ensure the functioning of the energy market.

**CONTENT:** as a result the gaps identified by CESR and ERGEG, the main elements of the proposed Regulation are as follows:

**Clear and consistent rules:** the Regulation develops rules which clearly prohibit market abuse on wholesale markets in electricity and related products, and wholesale markets in natural gas and related products. These rules include clear prohibitions on trading on insider information, and market manipulation. These rules are formulated in such a way that they are consistent with the Market Abuse Directive, and do not apply to financial instruments which are already covered by that Directive.

**Adaptable and compatible rules:** the Regulation allows these rules to be specified in delegated acts of the Commission.

Industry responses to the public consultation favoured this approach, which allows the specificities of energy markets, which are subject to change, to be taken into account.

**Measures for effective detection and deterrence:**

- **Market monitoring:** to detect market abuse an effectively functioning market monitor with timely access to complete transactional data is necessary. EU level market monitoring can take the holistic view needed for the monitoring of energy markets. The Agency for the Cooperation of Energy Regulators has the necessary expertise in energy markets, and institutional connections with national energy regulators for this role.

The Regulation provides for the Agency to gather, review and share data from wholesale energy markets. Member State authorities, including national regulatory authorities, financial regulators and competition authorities, have a direct interest in the market results and bring a vital understanding of the markets in their jurisdiction. Therefore cooperation between the Agency and national authorities is central to the monitoring foreseen.

- Data Reporting: the Regulation requires market participants to provide the Agency with a record of their transactions in wholesale energy products. The form, content and timing of the information to be provided will be laid down in delegated acts of the Commission. These will be based on draft guidelines developed by the Agency. These guidelines will provide for several channels for the reporting of data. This will minimise the burden on market participants and avoid double reporting obligations on entities covered by the Market Abuse Directive.

- Investigation and Enforcement: market monitoring will be accompanied by effective investigation where market abuse is suspected, where necessary leading to appropriate sanctions. The Regulation gives national regulatory authorities the lead role in this, requiring Member States to grant them the necessary powers to investigate suspected market abuse and to lay down appropriate rules on the penalties applicable in case of violations of the Regulation. The Regulation also recognises that the cross border nature of energy markets means that cooperation will be crucial. In this ACER is given an important role. In close contact with energy regulators and financial supervisors it will ensure that a consistent approach is taken to suspected market abuse, alerting national regulatory authorities to potential market abuse and facilitating information exchange.

This coordination role will be particularly important when an investigation covers several Member States or it is unclear where the suspected market abuse actually occurred. The Regulation provides for the possibility for an investigatory group to be established, coordinated by the Agency but made up of representatives of concerned national regulatory authorities.

BUDGETARY IMPLICATION: the total appropriations to cover the new tasks of the Agency for the Cooperation of Energy Regulators is estimated at EUR 1.315 million in 2012 and EUR 1.613 in 2013. These amounts cover the equipment, operating costs, mission expenditure for the new task and human resources.

## Wholesale energy market integrity and transparency

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The Council took note of a progress report on the work done so far on a draft regulation on energy market integrity and transparency.

The Hungarian Presidency intends to progress as much as possible with the examination of the proposal, in the light of the European Council conclusions of 4 February 2011 in which it states that the Council and European Parliament are invited to work towards the early adoption of the Commission's proposal for a Regulation on energy markets integrity and transparency.

While most delegations support the aims of the proposal, a majority of delegations still maintain scrutiny reservations, and one delegation maintains a reservation. Without prejudice to particular points of interest of individual delegations, the following issues appear to be the main issues to be resolved:

Use of delegated acts: the Commission proposal foresees the use of delegated acts for two issues: (i) to specify the definitions of "inside information", "market manipulation", "attempt to manipulate the market", "wholesale energy products" and "wholesale energy market" so that they can also cater for future market developments and changes in other EU legislation; (ii) to establish in detail the data collection mechanism for wholesale energy market transactions and orders to trade, and for underlying structural information.

Some delegations oppose the use of delegated acts - arguing that the proposed scope for the delegated acts covers essential elements - while several call for adding as much detail as possible in the draft Regulation (such as clarifications and examples), in order to define as much as possible the scope for the delegated acts.

Application of the provisions in practice: many questions and some concerns remain on the functioning in practice of the proposed provisions: this relates to the cooperation between the ACER and national regulatory authorities in market monitoring and in case of suspected breach of the provisions, the practical arrangements for the sharing of relevant information between the ACER, national regulatory authorities, competition authorities and others, and the reporting to be done by market participants or other entities.

For example, among the concerns and requests expressed are the following:

- delegations underlined that the reporting burden placed on market participants or entities acting on their behalf should be minimised: in this context double reporting should be avoided by taking account of reporting obligations in other legislation;
- a request was voiced for having the possibility to allow individual Member States to "replace" a certain authority (to which this Regulation attributes tasks) with another entity that would, in view of the existing national situation, be well-placed to carry out particular tasks;
- concern was expressed about the way in which national regulatory authorities should respond to requests from the ACER.

In addition to these main issues, several delegations have asked to include provisions relating to the harmonisation of penalties. However, some other delegations expressed concerns on this issue on which a public consultation is still underway.

## Wholesale energy market integrity and transparency

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The Presidency informed the Council on the state of play of a draft regulation on energy market integrity and transparency.

Among the key provisions that have been thoroughly examined by the Council instances one can note those related to:

- definitions,
- the role of ACER and of national regulatory authorities,
- the reporting framework and procedures as well as the Council's general endeavour to ensure consistency with corresponding instruments in the financial sector and to avoid duplication
- with such instruments.

The examination by the Council instances has led to a large degree of convergence on the text of the draft Regulation, notwithstanding several remaining concerns

of individual delegations on which work is continuing as well as an upcoming discussion in Coreper that will focus on the use of delegated acts and/or implementing acts.

In its conclusions of 4 February 2011, the European Council invited the Council and the European Parliament to work towards the early adoption of the Commission's proposal.

The European Council conclusions of 4 February 2011 invited the Council and the European Parliament to work towards the early adoption of the Commission's proposal. In that light, following good progress in the Council and the vote in the European Parliament's Committee on Industry, Research and Energy on 26 May, negotiations with the European Parliament will start on 16 June in order to reach a first-reading agreement by the end of June.

## Wholesale energy market integrity and transparency

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OPINION OF THE EUROPEAN DATA PROTECTION SUPERVISOR on the proposal for a Regulation of the European Parliament and of the Council on energy market integrity and transparency

The Commission did not consult the EDPS, and acting on his own initiative, the EDPS adopts this Opinion based on Article 41(2) of Regulation. (EC) No 45/2001.

The main aim of the Proposal is to prevent market manipulation and insider trading on wholesale energy (gas and electricity) markets. In particular, the proposed rules prohibit the following:

- use of inside information when selling or buying energy at the wholesale market level; exclusive and price sensitive information should be disclosed before trading can take place;
- transactions that give false or misleading signals about the supply, demand or prices of wholesale energy market products, and
- distributing false news or rumours that give misleading signals about these products.

Market monitoring at the European level to uncover possible infringements of these prohibitions will be the responsibility of the European Agency for the Cooperation of Energy Regulators (the 'ACER').

Pursuant to the proposal, the ACER will have timely access to information on the transactions taking place on wholesale energy markets. This includes information on price, quantity sold and the parties involved. This bulk data will also be shared with national regulators that will then be responsible for investigation of suspected abuses. In cases with a cross-border impact, the ACER will have the power to coordinate investigations. National regulatory authorities in Member States will enforce penalties.

The Proposal contains several provisions relevant to the protection of personal data:

- Articles 6 to 8 on market monitoring and reporting;
- Article 9 on 'data protection and operational reliability?';
- Articles 10 and 11 on investigation and enforcement; and
- Article 14 on 'relations with third countries?.'

In view of these factors, the EDPS makes the following recommendations:

Market monitoring and reporting: the proposed Regulation should clearly specify whether and to what extent the records of transactions and capacity information to be collected for monitoring purposes may include any personal data, and specific safeguards may also be required. If no processing of personal data is expected (or such processing would only be exceptional and would be restricted to rare cases, where a wholesale energy trader might be an individual rather than a legal entity), this should be clearly set forth in the proposal, at least in a recital.

Provisions on data protection, data security and accountability: these provisions should be clarified and further strengthened, especially if the processing of personal data would play a more structural role. The Commission should ensure that adequate controls are in place to ensure data protection compliance and provide evidence thereof ('accountability?').

On-site inspections: the proposal should clarify whether these inspections are limited to a business property (premises, land and vehicles) of a market participant or whether they may also be carried out in a private property (premises, land or vehicles) of individuals. In the latter case, the proportionality and necessity of on-site inspections on a private property should be specifically justified, and additional safeguards as well as a judicial warrant would also be needed. This should be clearly stated in the proposal.

Powers to require 'existing telephone and existing data traffic records: the proposal should clarify the scope of this power. It should, in particular:

- unambiguously specify what records can be required and from whom;
- explicitly mention the fact that no data can be required from providers of publicly available electronic communications services, at least in a recital;
- clarify whether the authorities may also require private records of individuals, such as employees or executives of the market participant under investigation (e.g. text messages sent from personal mobile devices or browsing history of home internet use). If this is case, the necessity and proportionality of this power should be clearly justified and the Proposal should also require a warrant from a judicial authority

Reporting of suspected market abuse: the proposal should explicitly provide that any personal data contained in these reports should only be used for purposes of investigating the suspected market abuse reported. Unless a suspected market abuse has led to a specific investigation and the investigation is still ongoing, all personal data related to the reported suspected market abuse should be deleted from the records of all recipients after the lapse of a specified period (unless otherwise justified, at the latest two years following the date of report). Parties to an information exchange should also send each other an update in case a suspicion proves to be unfounded and/or an investigation has been closed without taking further action.

Transfers of personal data to third countries: the proposal should clarify that in principle, transfers can only be made to entities or individuals in a third country that does not afford adequate protection if the controller adduces adequate safeguards with respect to the protection of the privacy and fundamental rights and freedoms of individuals and as regard the exercise of the corresponding rights.

Prior checking by the EDPS: the ACER should submit to the EDPS for prior checking its personal data processing activities with regard to coordination of investigations under the proposed Regulation.

## Wholesale energy market integrity and transparency

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The Committee on Industry, Research and Energy adopted the report by Jorgo CHATZIMARKAKIS (ADLE, DE) on the proposal for a regulation of the European Parliament and of the Council on energy market integrity and transparency.

The committee recommends that the European Parliament's position adopted at first reading should amend the Commission's proposal. The proposed amendments are the result of negotiations between the members of the committee and Member States' representatives. It may be summarised as follows:

Subject matter and scope: the amended text stipulates that the rules must be coherent with those applying in financial markets and with the proper functioning of the energy markets thereby taking into account the specific characteristics of these markets. The Regulation provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators (ACRE) in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

ACRE should ensure that the application of this Regulation is done in a coordinated way across the Union, and is coherent with the application of Directive 2003/6/EC. To this effect, ACRE must publish non-binding guidance on the application of the definitions set out in the Regulation. This guidance should address the issue of accepted market practices. It should also be able to request cooperation, and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities, and where appropriate, other authorities including national competition authorities.

The Director of ACRE shall consult the Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions. The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under the Regulation. "market manipulation" means:

Manipulations of wholesale energy markets: this involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability, production, storage or transportation capacity and demand. The text sets out the different forms of such market manipulation which include: placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media including the internet, or by any other means.

Examples of market manipulation and attempts to manipulate the market include: (i) conduct by a person or persons acting in collaboration, to secure a decisive position over the supply of or demand for a wholesale energy product; (ii) the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices.

Wholesale energy products: for the purposes of the Regulation, contracts for the supply and distribution of natural gas or electricity to final customers with a capacity to consume of more than 600 GWh per year of either electricity or gas shall be treated as wholesale energy products.

Insider information: the disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless: (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or (ii) when disclosure is made with the intention to mislead the market as to the supply of, demand for, or price of wholesale energy products.

The amended text provides also for the obligation to publish inside information. Such disclosure shall include information relevant to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities.

Adaptations of the concepts of insider information and market abuse: in order to ensure the necessary flexibility to respond quickly to developments, the power to adopt acts is delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy.

Market monitoring: national regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets. 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 at that authority to carry out market monitoring with the national regulatory authority.

The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report public. In such reports the Agency shall assess 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.

Data collection: market participants shall provide the Agency with certain information which 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 provide the Agency and national regulatory authorities with information related to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities, 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.

In order to ensure uniform conditions for the implementation of provisions on data collection, implementing powers are conferred on the Commission, to be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Registration of market participants: a European register of market participants, based on national registers, will be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of this register, the Commission will assess in cooperation with the Agency the functioning and the usefulness of the European register of market participants. If deemed appropriate based on this assessment, the Commission will consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure an EU-wide level playing field for market participants.

Data protection: ACRE must ensure the operational security and protection of the data which it receives. ACRE should also ascertain that those authorities who have access to the data held by the Agency will be able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to freedom of expression and information recognised in the Charter.

Right of appeal: a new provision states that 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.

Penalties: 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. The recitals state that the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate timeframe.

## Wholesale energy market integrity and transparency

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The European Parliament adopted by 616 votes to 26 with 24 abstentions, a legislative resolution on the proposal for a regulation of the European Parliament and of the Council on energy market integrity and transparency.

Parliament adopted its position in first reading in accordance with the ordinary legislative procedure. The amendments adopted in plenary are the result of a compromise negotiated between Parliament and Council. They amended the Commission proposal as follows:

Subject matter and scope: the 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 (ACRE) in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

Role of the Agency: ACRE should ensure that the application of the Regulation is done in a coordinated way across the Union, and is coherent with the application of Directive 2003/6/EC. To this effect, ACRE must publish non-binding guidance on the application of the definitions set out in the Regulation. This guidance should address the issue of accepted market practices. It should also be able to request cooperation, and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities, and where appropriate, other authorities including national competition authorities.

The Director of ACRE shall consult the Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions. ACRE should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under the Regulation.

Manipulations of wholesale energy markets: the Regulation forbids behaviour which undermines the integrity of the energy market. The amended text stipulates that such manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation include:

- placing and withdrawal of false orders;
- spreading of false or misleading information or rumours through the media, including the internet, or by any other means;
- deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports;
- deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products.

Examples of market manipulation and attempts to manipulate the market include: (i) conduct by a person or persons acting in collaboration, to secure a decisive position over the supply of or demand for a wholesale energy product; (ii) the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices.

Insider information: the amended text provides for the obligation to publish inside information. Such disclosure shall include information relevant to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities.

The disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless: (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or (ii) when disclosure is made with the intention to mislead the market as to the supply of, demand for, or price of wholesale energy products.

Adaptations of the concepts of insider information and market abuse: in order to ensure the necessary flexibility to respond quickly to developments, the power to adopt acts is delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy.

Market monitoring: national regulatory authorities shall cooperate at regional level and with ACRE in carrying out the monitoring of wholesale energy markets. 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 at that authority to carry out market monitoring with the national regulatory authority.

ACRE shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report public. In such reports ACRE shall assess 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.

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

Data collection: market participants shall provide ACRE with certain information which 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 provide ACRE and national regulatory authorities with information related to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities, 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.

In order to ensure uniform conditions for the implementation of provisions on data collection, implementing powers are conferred on the Commission, to be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council.

Registration of market participants: a European register of market participants, based on national registers, will be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of this register, the Commission will assess in cooperation with the Agency the functioning and the usefulness of the European register of market participants. If deemed appropriate based on this assessment, the Commission will consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure an EU-wide level playing field for market participants.

Data protection: ACRE must ensure the operational security and protection of the data which it receives. ACRE should also ascertain that those authorities who have access to the data held by the Agency will be able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union and should be applied in accordance with the right to freedom of expression and information recognised in the Charter.

Right of appeal: a new provision states that 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.

Penalties: 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. The recitals state that the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate timeframe.

## Wholesale energy market integrity and transparency

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**PURPOSE:** to establish a harmonised framework to ensure wholesale energy market transparency and integrity.

**LEGISLATIVE ACT:** Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency.

**CONTENT:** following an agreement in first reading with the European Parliament, the Council adopted a regulation on wholesale energy market integrity and transparency.

As the EU internal energy market for electricity and gas is becoming more and more liberalised and interconnected, the potential for its abuse and manipulation is also growing.

The new Regulation sets up a framework for monitoring wholesale energy markets in order to detect and deter market abuse and manipulation effectively, and thus ensure the integrity and transparency of the market. The central element of this framework is the establishment of a market monitoring function at European level, a task which will be carried out by the Agency for the Cooperation of Energy Regulators (ACER).

**Role of the Agency:** the ACER will monitor trading activity in wholesale energy products in close collaboration with national regulatory authorities. It will collect the data needed to assess and monitor wholesale energy markets. The ACER will establish a European register of market participants based on the information provided by national regulatory authorities.

The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess 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.

**Insider dealing and market manipulation:** the new rules prohibit insider trading and market manipulation and establish provisions on an obligation to publish inside information. Manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand.



Forms of market manipulation include:

- placing and withdrawal of false orders;
- spreading of false or misleading information or rumours through the media, including the internet, or by any other means;
- deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports;
- deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products.

Insider information: the new rules include the obligation to publish inside information. Such disclosure shall include information relevant to the capacity and utilisation of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and utilisation of LNG facilities, including planned or unplanned unavailability of these facilities.

The disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless: (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or (ii) when disclosure is made with the intention to mislead the market as to the supply of, demand for, or price of wholesale energy products.

Penalties: Member States must impose penalties applicable to infringements of this regulation, which must be proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

ENTRY INTO FORCE: 28/12/2011.

DELEGATED ACTS: the Commission has the power to adopt delegated acts in respect of technical updating of the definitions of inside information and market manipulation. The power to adopt delegated acts is conferred on the Commission for a period of 5 years from 28 December 2011 (tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension.) A delegated act adopted 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 (extended by 2 months at the initiative of the European Parliament or the Council.)