Basic information

COD - Ordinary legislative procedure (ex-codecision procedure)

Regulation

Wholesale energy market: Union’s protection against market manipulation

Amending Regulation 2011/1227 2010/0363(COD)
Amending Regulation 2019/942 2016/0378(COD)

Subject
2 Internal market, single market
2.60 Competition
2.60.01 Trade restrictions, concerted practices, dominant positions
3.60 Energy policy
3.60.03 Gas, electricity, natural gas, biogas
3.60.05 Alternative and renewable energies
3.60.15 Cooperation and agreements for energy

Legislative priorities
Joint Declaration 2023-24

Key players

European Parliament

Committee responsible
ITRE Industry, Research and Energy

Rapporteur
CARVALHO Maria da Graça
Appointed 30/03/2023

Shadow rapporteur
TOIA Patrizia
GAMON Claudia
DALUNDE Jakop G.
BORCHIA Paolo
KRASNODEBSKI Zdzisław
MESURE Marina

Committee for opinion
BUDD Budgets

Rapporteur for opinion
VAN OVERTVELDT Johan
Appointed 28/03/2023

ECON Economic and Monetary Affairs

20/04/2023
The committee decided not to give an opinion.

### Key events

<table>
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<th>Date</th>
<th>Event</th>
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<tr>
<td>14/03/2023</td>
<td>Legislative proposal published</td>
<td>COM(2023)0147</td>
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<td>29/03/2023</td>
<td>Committee referral announced in Parliament, 1st reading</td>
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<td>07/09/2023</td>
<td>Vote in committee, 1st reading</td>
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<td>07/09/2023</td>
<td>Committee decision to open interinstitutional negotiations with report adopted in committee</td>
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<td>08/09/2023</td>
<td>Committee report tabled for plenary, 1st reading</td>
<td>A9-0261/2023</td>
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<td>11/09/2023</td>
<td>Committee decision to enter into interinstitutional negotiations announced in plenary (Rule 71)</td>
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<td>13/09/2023</td>
<td>Committee decision to enter into interinstitutional negotiations confirmed by plenary (Rule 71)</td>
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### Forecasts

| Date       | Event                                                                 |
|------------|                                                                      |
| 11/03/2024 | Indicative plenary sitting date                                    |

### Technical information

- **Procedure reference**: 2023/0076(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-p3; Treaty on the Functioning of the EU TFEU 194-p2
- **Other legal basis**: Rules of Procedure EP 159
- **Mandatory consultation of other institutions**: European Economic and Social Committee, European Committee of the Regions
Wholesale energy market: Union’s protection against market manipulation

PURPOSE: to stimulate open and fair competition in European wholesale energy markets by enhancing market transparency and integrity.


ROLE OF THE EUROPEAN PARLIAMENT: the European Parliament decides in accordance with the ordinary legislative procedure and on an equal footing with the Council.

BACKGROUND: very high prices and volatility in electricity markets have been observed since September 2021. This is mainly a consequence of the high price of gas, which is used as an input to generate electricity. The Russian invasion of Ukraine has also caused uncertainty on the supply of other commodities, such as hard coal and crude oil, used by power-generating installations. This has resulted in substantial additional increases in the volatility of price levels of electricity.

The EU has reacted swiftly to this situation by introducing a wide range of measures to mitigate the impact of high and volatile wholesale energy prices on households and businesses. To address the shortcomings that emerged during the crisis and to take advantage of the growing importance of renewable energy, the Commission announced a reform of the organisation of the electricity market. The proposed reform includes major revisions to several pieces of EU legislation, including the Electricity Regulation, the **Electricity Directive**, and the present **REMIT Regulation**.

The integrity and transparency of the internal electricity and gas markets are essential to ensure open and fair competition in the internal electricity and gas markets and a level playing field for market participants. Regulation (EU) No 1227/2011 of the European Parliament and of the Council (REMIT) establishes a comprehensive framework to achieve this objective.

In order to enhance public trust in the proper functioning of the energy markets and to effectively protect the Union against attempts at market manipulation, Regulation (EU) No 1227/2011 should be amended and the shortcomings identified in the current framework should be addressed so as to further increase transparency and insufficient monitoring capacity and to ensure more effective investigation and enforcement of potential cross-border market abuse.

The proposed reform will strengthen the ability of the Agency for the Cooperation of Energy Regulators (ACER) and national regulators to monitor the integrity and transparency of the wholesale energy market. This will ensure that markets behave competitively and that prices are set transparently.

CONTENT: the amendments concerning REMIT Regulation:

- adapt the scope of REMIT to current and evolving market circumstances by inter alia extending the scope of data reporting to new electricity balancing markets and coupled markets as well algorithmic trading;
- adjust the definition of market manipulation to include 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;
- ensures stronger, more established and regular cooperation between energy and financial regulators, including ACER and ESMA regarding derivative wholesale energy products;
- improve process for the collection of inside information and market transparency by enhancing the oversight of ACER and adjustment of inside information definition. Amendments to REMIT Regulation;
- enhance supervision of reporting parties such as registered reporting mechanisms and persons professionally arranging transactions;
- improve data sharing possibilities between ACER, relevant national authorities and the Commission. REMIT amendment;
- strengthen the role of ACER in investigations of significant cross-border cases to fight against the REMIT breaches;
- set out the framework for harmonisation of fines set by regulatory authorities at national level.

Wholesale energy market: Union’s protection against market manipulation


The committee responsible recommended that the European Parliament’s position adopted at first reading under the ordinary legislative procedure should amend the proposal as follows:

Sensitive data

The report noted that where information is not, or is no longer, sensitive from a commercial point of view, 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 is intended to help to build confidence in the market and to 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 transparency purposes in a fair and transparent manner.

Registered Reporting Mechanisms (RRMs)

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 impose fines and periodic penalty payments and to issue public notices.

Price assessments and benchmarks

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 the Union. The Agency should be empowered to collect this market data from all participants active in LNG deliveries into the Union.

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 in place under Regulation (EU) No 1227/2011. Where the Agency finds that an LNG market participant has not submitted the required information, it should be able to impose fines or periodic penalty payments.

Investigation of breaches

The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. 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.

Penalties

A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Member States should provide for effective, proportionate and dissuasive criminal penalties, considering that they are an effective tool in the financial sector. Administrative penalties, 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.

By 1 June 2025, the Commission should 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 should submit a report to the European Parliament and to the Council.

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.

Report and review
The amended text stated that by 1 June 2027, and every five years thereafter, the Commission, in consultation with relevant stakeholders, should assess the application of this Regulation, in particular as regards its impact on market behaviour, market participants, liquidity, reporting requirements, including on LNG market data and the level of administrative burden for market participants, including the potential barriers to entry for new market participants, as well as the Agency's performance in relation to its objectives, mandate and tasks.

Based on those assessments, the Commission should draw up a report and submit it without undue delay to the European Parliament and to the Council. The report should be accompanied, where appropriate, by a legislative proposal.

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