



Brussels, 1 March 2024  
(OR. en)

6987/24

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**Interinstitutional File:**  
**2023/0076(COD)**

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CODEC 602  
ENER 95  
ENV 221  
CLIMA 87  
COMPET 224  
CONSOM 80  
FISC 43  
PE 33

## INFORMATION NOTE

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From:	General Secretariat of the Council
To:	Permanent Representatives Committee/Council
Subject:	Proposal for a REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market - Outcome of the European Parliament's first reading (Strasbourg, 26 to 29 February 2024)

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## I. INTRODUCTION

In accordance with the provisions of Article 294 of the TFEU and the Joint declaration on practical arrangements for the codecision procedure<sup>1</sup>, a number of informal contacts have taken place between the Council, the European Parliament and the Commission with a view to reaching an agreement on this file at first reading.

In this context, the Chair of the Committee on Industry, Research and Energy (ITRE) Cristian-Silviu BUȘOI (EPP, RO) presented on behalf of ITRE a compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation, for which Maria da Graça CARVALHO (EPP, PT) had prepared a draft report. This amendment had been agreed during the informal contacts referred to above. No other amendments were tabled.

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<sup>1</sup> OJ C 145, 30.6.2007, p. 5.

## II. VOTE

When it voted on 29 February 2024, the plenary adopted the compromise amendment (amendment number 2) to the abovementioned proposal for a Regulation. The Commission's proposal as thus amended constitutes the Parliament's first-reading position which is contained in its legislative resolution as set out in the Annex hereto<sup>2</sup>.

The Parliament's position reflects what had been previously agreed between the institutions. The Council should therefore be in a position to approve the Parliament's position.

The act would then be adopted in the wording which corresponds to the Parliament's position.

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<sup>2</sup> The version of the Parliament's position in the legislative resolution has been marked up to indicate the changes made by the amendments to the Commission's proposal. Additions to the Commission's text are highlighted in ***bold and italics***. The symbol "■" indicates deleted text.

## **P9\_TA(2024)0116**

### **Improving the Union's protection against market manipulation on the wholesale energy market**

**European Parliament legislative resolution of 29 February 2024 on the proposal for a regulation of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market (COM(2023)0147 – C9-0050/2023 – 2023/0076(COD))**

**(Ordinary legislative procedure: first reading)**

*The European Parliament,*

- having regard to the Commission proposal to Parliament and the Council (COM(2023)0147),
  - having regard to Article 294(2) and Article 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 14 June 2023<sup>1</sup>,
  - after consulting the Committee of the Regions,
- having regard to the provisional agreement approved by the committee responsible under Rule 74(4) of its Rules of Procedure and the undertaking given by the Council representative by letter of 20 December 2023 to approve Parliament's position, in accordance with Article 294(4) of the Treaty on the Functioning of the European Union,
- 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 (A9-0261/2023),

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<sup>1</sup> OJ C 293, 18.8.2023, p. 138.

1. Adopts its position at first reading hereinafter set out;
2. Calls on the Commission to refer the matter to Parliament again if it replaces, substantially amends or intends to substantially amend its proposal;
3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

**Position of the European Parliament adopted at first reading on 29 February 2024 with a view to the adoption of Regulation (EU) 2024/... of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market**

**(Text with EEA relevance)**

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national parliaments,

Having regard to the opinion of the European Economic and Social Committee<sup>4</sup>,

*After consulting* the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure<sup>5</sup>,

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<sup>4</sup> OJ C 293, 18.8.2023, p. 138.

<sup>5</sup> *Position of the European Parliament of 29 February 2024.*

Whereas:

- (1) Open and fair competition in the internal markets for electricity and for gas 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<sup>6</sup> establishes a comprehensive framework to achieve that objective. To enhance the public's trust in functioning wholesale energy markets and to protect the Union effectively against market *abuse*, Regulation (EU) No 1227/2011 should be amended to *ensure* further transparency and *increase* monitoring capacities, *thereby contributing to the stabilisation of energy prices and consumer protection*, as well as to ensure more effective investigation and enforcement of cases of potential cross-border market abuse addressing the shortcomings identified in the current framework.

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<sup>6</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (OJ L 326, 8.12.2011, p. 1).

- (2) Financial instruments, including energy derivatives, traded on wholesale energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and wholesale energy markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation of the Union, such as Regulation (EU) No 596/2014 of the European Parliament and of the Council<sup>7</sup>, including with respect to the definitions of market manipulation and inside information. The definition of market manipulation in Regulation (EU) No 1227/2011 should therefore be ■ amended to ***align it with*** Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be amended to capture the entering into any transaction, or issuing, modifying or withdrawing any order to trade, but also any other behaviour relating to wholesale energy products which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or more wholesale energy products at an artificial level; or 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. ***In that regard, with a view to the alignment with Regulation (EU) No 596/2014, the notion of any other behaviour relating to wholesale energy products should include, but should not be limited to, actions such as quote stuffing, painting the tape or momentum ignition.***

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<sup>7</sup> 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).

- (3) The definition of inside information should also be amended to ***align it with*** Regulation (EU) No 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 could in itself constitute a set of particular circumstances or a particular 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 should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the ***wholesale energy products*** concerned is to be taken into consideration. An intermediate step in a protracted process should be considered to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.
- (4) This Regulation is without prejudice to Regulations (EU) No 648/2012 of the European Parliament and of the Council<sup>8</sup>, (EU) No 596/2014 and (EU) No 600/2014 of the European Parliament and of the Council<sup>9</sup> and to Directive 2014/65/EU of the European Parliament and of the Council<sup>10</sup>, as well as to the application of ***Union*** competition law to the practices covered by this Regulation.
- (5) The sharing of information between national regulatory authorities and the competent financial authorities of the Member States is a central aspect of the cooperation with regard to, and detection of, potential breaches of this Regulation concerning both the wholesale energy markets and the financial markets. In light of the exchange of information between competent authorities pursuant to Regulation (EU) No 596/2014 at national level, national regulatory authorities should share relevant information that they receive with the competent financial authorities of the Member States and the national competition authorities.

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<sup>8</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).

<sup>9</sup> Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).

<sup>10</sup> Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).



- (6) Where information shared with the European Agency for the Cooperation of Energy Regulators (the ‘Agency’) is not, or is no longer, sensitive from a commercial or security point of view, the Agency ■ should be able to make that information available to market participants and to the wider public *in an accessible manner* with a view to contributing to enhanced knowledge about the wholesale energy markets. This should include the possibility for *the Agency* to publish *aggregated* information on organised marketplaces (OMPs), inside information platforms (IIPs) and registered reporting mechanisms (RRMs) *in accordance with* applicable data protection *law* with the aim of improving transparency of wholesale energy markets and provided that it does not distort competition on those energy markets.
- (7) *Where information shared with the Agency 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 knowledge about the wholesale energy markets. This is intended to help to build confidence in, 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 intends to make the information available for scientific and transparency purposes in a fair and transparent manner.*

- (8) *In order to further enhance market transparency in the Union wholesale energy markets and to contribute to a common Union energy data strategy, the Agency should develop and maintain a digital reference centre containing information on Union wholesale energy market data (the ‘Reference Centre’). The Agency should make public, in a user-friendly manner, parts of the information which it collects pursuant to this Regulation, including information regarding the trading of over-the-counter wholesale energy contracts, power purchase agreements and contracts for difference. Any data made public by means of the Reference Centre should be subject to this Regulation and to the applicable data protection law.*
- (9) OMPs which carry out activities relating to the trading of wholesale energy products that are financial instruments as defined in Article 4(1), point (15) of Directive 2014/65/EU *should* be duly authorised pursuant to the requirements of that Directive.
- (10) 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 those practices should be addressed in Regulation (EU) No 1227/2011.

- (11) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of the utmost importance in order to ensure the effective monitoring and detection of potential breaches with a view to achieving the objective of that Regulation. Inconsistencies in the quality, formatting, reliability and cost of trading data have a **negative** effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for the purpose of enabling it to carry out its tasks and functions effectively.
- (12) In order to improve the Agency's wholesale energy 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 should include coupled markets, new balancing markets, contracts for balancing markets, ***allocated transmission capacities*** and products that have potential delivery in the Union. OMPs should be required to ***make available to the Agency data relating to the*** order book ***or, upon request, provide the Agency with access, without delay, to the order book.*** Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches of this Regulation.

- (13) *The reporting obligations on market participants should be minimised by collecting the required information or parts thereof, where possible from existing sources. Market participants are unable easily to record or report OMP data. OMP data should therefore be made available to the Agency by the relevant OMPs or by third parties acting on their behalf.*
- (14) *Any processing of personal data carried out within the framework of this Regulation, such as the exchange or transmission of personal data between relevant national authorities and reporting by national regulatory authorities, should be carried out in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council<sup>11</sup>, and any exchange or transmission of information by the Agency should be carried out in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council<sup>12</sup>.*

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<sup>11</sup> *Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).*

<sup>12</sup> *Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39).*

- (15) IIPs should play an important role for the effective **disclosure** of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and to enhance transparency. ***Market participants may, only in addition, continue to use other channels, including market participants' websites, to disclose inside information.*** To ensure trust in the IIPs, they should be authorised pursuant to this Regulation. ***IIPs, including those registered by the Agency pursuant to Article 11 of Commission Implementing Regulation (EU) No 1348/2014<sup>13</sup>, should comply with the requirements for authorisation and with data protection law. The Agency should have the power to withdraw such authorisation in certain cases, while respecting the procedural safeguards referred to in Article 14(6), (7) and (8) of Regulation (EU) 2019/942 of the European Parliament and of the Council<sup>14</sup>. The withdrawal of an authorisation should not prevent an entity from applying for a new authorisation as IIP with the Agency. IIPs registered by the Agency pursuant to Implementing Regulation (EU) No 1348/2014 and included in the Agency's list of IIPs should be allowed to continue operating until the Agency has taken a decision on authorisation pursuant to this Regulation. IIPs should have mechanisms in place allowing inside information reports to be quickly and effectively checked. In the development of such mechanisms, IIPs may involve market participants.***

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<sup>13</sup> ***Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121).***

<sup>14</sup> ***Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).***

- (16) To streamline and make the reporting of data to the Agency more effective, the information should be provided through RRM s and the operation of RRM s should be authorised by the Agency pursuant to this Regulation. *RRM s, including those registered by the Agency pursuant to Article 11 of Implementing Regulation (EU) No 1348/2014, should* comply with the requirements for authorisation and *with* data protection law. The Agency should *maintain* a register of RRM s that *it has authorised*. *The Agency should have the power to withdraw such authorisation in certain cases, while respecting the procedural safeguards referred to in Article 14(6), (7) and (8) of Regulation (EU) 2019/942. The withdrawal of an authorisation should not prevent an entity from applying for a new authorisation as RRM with the Agency. RRM s registered by the Agency pursuant to Implementing Regulation (EU) No 1348/2014 and included in the Agency's list of RRM s should be allowed to continue operating until the Agency has taken a decision on authorisation pursuant to this Regulation. RRM s should have mechanisms in place allowing transaction reports to be effectively checked. In the development of such mechanisms, RRM s may involve market participants.*
- (17) In order to facilitate monitoring to detect potential trading on the basis of inside information ■ , the collection of inside information needs to be aligned with the current processes for trade data reporting.

- (18) Persons professionally arranging or executing transactions should have the obligation to report suspicious transactions in breach of Regulation (EU) No 1227/2011 with regard to insider trading and market manipulation and, in order to enhance the possibility of enforcement of such breaches, should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and order book providers are considered to be persons professionally arranging transactions.
- (19) Commission Regulation (EU) 2015/1222<sup>15</sup> provides for the possibility for third-country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since market-coupling operators use 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 products pursuant to this Regulation.

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<sup>15</sup> Commission Regulation (EU) 2015/1222 of 24 July 2015 establishing a guideline on capacity allocation and congestion management (OJ L 197, 25.7.2015, p. 24).

- (20) In order to obtain an accurate, objective and reliable assessment of the price for liquefied natural gas (LNG) deliveries to the Union, the Agency should collect all the LNG market data that are necessary to establish a daily LNG price assessment *and an LNG benchmark*. The LNG price assessment *and the LNG benchmark* should be established on the basis of all transactions pertaining to LNG deliveries *to* the Union. *The Agency* should be empowered to collect the relevant market data from all participants active in LNG deliveries *to* the Union, which should report the LNG market data to *the Agency* as close to real time as technologically possible, either after the conclusion of a transaction or after the posting of a bid or offer to enter into a transaction. The *Agency's* LNG price assessment should comprise the most complete dataset including transaction prices **■**, bids and offer prices for LNG deliveries to the Union. The daily publication of that objective LNG 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 derivative contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.



- (21) The delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and *aims to* reduce the burden imposed on market participants. Therefore, a clear legal basis should be provided for such delegation. National regulatory authorities should be able to delegate tasks and responsibilities to another national regulatory authority *or to the Agency, with the delegates' prior consent. The national regulatory authorities should be able to introduce* specific conditions and *to limit* the scope *of* the delegation to what is necessary for the effective supervision of cross-border market participants or groups ■ . Delegations should be governed by the principle of allocating competence to the authority which is best placed to take action on the subject matter.
- (22) *The rules on the performance of the duties of national regulatory authorities and of the Agency should ensure that conflicts of interest are avoided as far as possible.*

- (23) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. *In order to ensure the consistent application of administrative fines across the Member States for breaches of Regulation (EU) No 1227/2011, that Regulation should be amended to provide for a list of administrative fines and other administrative measures which should be available to the national regulatory authorities as well as for a list of criteria to determine the level of those administrative fines. In particular, the amount of administrative fines which can be imposed in a specific case should be able to reach the maximum level provided for in this Regulation. However, this Regulation does not limit Member States' ability to provide for lower administrative fines on a case-by-case basis.* Penalties for breaches of Regulation (EU) No 1227/2011 should be proportionate, effective and dissuasive and should reflect the type of the breaches, taking into account the *ne bis in idem* principle. *The adoption and publication of administrative fines should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union (the 'Charter'). Administrative fines and other administrative measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy markets requires a consistent approach among national regulatory authorities. In order to fulfil their tasks, it is necessary that the national regulatory authorities be provided with the appropriate resources.*

- (24) *Where a market participant that is not resident or established in the Union is active within the Union, it should designate a representative in the Union. The representative should be explicitly designated by a written mandate of the market participant to be authorised to act on its behalf. It should be possible for the national regulatory authorities or the Agency to address the representative with regard to the obligations laid down in this Regulation.*
- (25) To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviour is increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border cases of market abuse can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to conduct the investigation in question.
- (26) Cases of market abuse involving multiple cross-border elements and market participants established in third countries are also particularly challenging from an enforcement perspective. The current supervisory framework 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 ■ a need to set up an efficient and effective supervisory and investigatory regime for *those* cases of market abuse which cannot, due to their Union wide features, be addressed by Member State action alone.

- (27) The investigation of breaches of Regulation (EU) No 1227/2011 with a cross-border dimension should be carried out through a uniform process at Union level. ***Moreover, such investigations can be better conducted at Union level, as their impact expands beyond the territory of a single Member State.*** The complexity of cross-border cases and the need to ensure sufficient resources for such cases requires the involvement of the Agency, in particular in ***a*** more integrated wholesale 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 that experience, the Agency should be empowered to carry out investigations to combat breaches of Regulation (EU) No 1227/2011, ***including by appointing an independent investigating officer within the Agency.*** The Agency should carry out such investigations in cooperation with the national regulatory authorities ***and other relevant authorities*** with the purpose of supporting and complementing their enforcement activities ***and taking into account the ne bis in idem principle.*** Moreover, in the context of an investigation conducted by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency. ***In exercising its powers, the Agency should be able to give priority, if needed, to the cases with the most significant cross-border impact.***
- (28) ***To fulfil the new obligations assigned to it, in particular those relating to enhanced investigatory powers in cross-border cases, the Agency should have adequate resources, including the necessary personnel.***

- (29) *A main criterion for determining whether a case has a cross-border dimension relates to the delivery of wholesale energy products in a certain number of Member States. However, for technical reasons, there are cases where it is not possible to identify the geographic location of delivery of wholesale energy products. For instance, when delivery of wholesale energy products takes place or is assumed to take place in a bidding zone which encompasses the territory, or part of the territory, of at least two Member States in the intra-day and day-ahead wholesale electricity markets, it is not possible to identify the precise place of that delivery within that zone. The same applies to delivery of wholesale energy products that takes place or is assumed to take place in gas balancing zones which encompass the territory, or part of the territory, of at least two Member States. To ensure that the Agency acts in genuine cross-border cases as opposed to cases that have only a national dimension, the delivery of wholesale energy products within a bidding or balancing zone that encompasses the territory of at least two Member States should be considered to be delivery in a single Member State. However, the national regulatory authorities concerned should maintain their right also to request the Agency's involvement in cases with a cross-border dimension pursuant to this Regulation, as well as their right to object pursuant to this Regulation.*

- (30) The Agency should be empowered to carry out *any necessary investigations* by conducting on-site inspections, *by taking statements, as well as* by issuing requests for information *by simple request or by decision*, to the persons subject to *investigation*, ■ where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In *order to safeguard the effectiveness of on-site inspections, the officials of, and persons authorised or appointed by, the Agency to conduct the on-site inspection should be empowered to enter business premises where business records could be kept and private premises of directors, managers or other members of staff of businesses concerned by an investigation. However, any investigations of private premises during on-site inspections should be* subject to *a reasoned decision by the Agency and the prior authorisation of a national judicial authority.*
- (31) *In undertaking the on-site inspections and in issuing requests for information to the persons subject to investigation, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which should provide the Agency with the necessary assistance, including where a person refuses to submit to the on-site inspection or to provide the requested information. Moreover, in the course of an on-site inspection, the officials of, and persons authorised or appointed by, the Agency to conduct the on-site inspection should be empowered to affix seals on business premises for the period of time necessary for the on-site inspection. Except in duly substantiated cases, seals should not be affixed for more than 72 hours. Moreover, the officials conducting the on-site inspections should be empowered to request any information relevant to the subject matter and purpose of the on-site inspection.*

- (32) *The Agency should be empowered to impose periodic penalty payments to ensure compliance with its decisions regarding on-site inspections and requests for information adopted in the context of a cross-border investigation. However, the Agency should not be empowered to impose fines. Any periodic penalty payments imposed by the Agency should be proportionate, effective and dissuasive and ensure efficient cross-border investigations. It is important that the procedural safeguards and fundamental rights of the persons subject to the Agency's investigations are fully respected. Any action of the Agency should be proportionate and ensure due process and the person's rights of defence. The confidentiality of the information submitted by the persons subject to the investigation should be safeguarded and exchanged in accordance with applicable Union data protection rules.*
- (33) *At the end of each investigation the Agency should draw up an investigation report including its findings and all evidence on which such findings have been based. The investigation report should be submitted to the national regulatory authorities of the Member States concerned, which should, in turn, without prejudice to their exclusive competence for determining whether a breach has taken place, take any necessary enforcement measures, including, as appropriate, the imposition of fines, in accordance with this Regulation and national law. The national regulatory authorities should do their utmost to ensure an appropriate follow up of the Agency's investigation reports.*

- (34) *The Agency should regularly inform the European Parliament and the Council of its activities regarding cross-border investigations. For that purpose, the Agency should submit summaries of its investigation reports to the European Parliament and to the Council on a regular basis. Such summaries should be submitted in an aggregated and anonymised form and should be treated as confidential, inter alia in view of the need to protect the purpose of the cross-border investigations in question in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council<sup>16</sup>.*
- (35) *Any decisions adopted by the Agency under this Regulation should be subject to review by the Court of Justice of the European Union, including decisions whereby the Agency has imposed a periodic penalty payment. This Regulation is without prejudice to the competence of national courts or tribunals to review decisions adopted by the competent national authorities pursuant to this Regulation, such as authorisations by national judicial authorities in the context of on-site inspections carried out by the Agency or claims of irregularities under national rules on the enforcement of periodic penalty payments.*
- (36) *This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter, in particular the right to the protection of personal data, the freedom to conduct a business, the right to an effective remedy and to a fair trial, and the right not to be tried or punished twice for the same offence, and has to be interpreted and applied in accordance with those rights and principles.*

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<sup>16</sup> *Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents (OJ L 145, 31.5.2001, p. 43).*



- (37) *In order to lay down the necessary details to ensure the effectiveness of this Regulation, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of amending this Regulation by aligning the relevant definitions in the cases provided for in this Regulation for the purpose of ensuring coherence with other relevant Union law in the fields of financial services and energy and by updating those definitions for the sole purpose of taking into account future developments on wholesale energy markets, and in respect of supplementing this Regulation by specifying the means by which IIPs and RRM s are to comply with their respective obligations, the details concerning the process of withdrawing an authorisation and the process of the orderly substitution, as well as the relevant procedural safeguards and by establishing, taking into account national specificities, minimum thresholds for the identification of events which, if they were made public, would be likely to significantly affect the prices of the wholesale energy products. When establishing such thresholds, the Commission should consider ensuring coherence with other relevant Union law in the fields of financial services and energy. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level and that those consultations be conducted in accordance with the principles laid down in the Interinstitutional Agreement of 13 April 2016 on Better Law-Making<sup>17</sup>. In particular, to ensure equal participation in the preparation of delegated acts, the European Parliament and the Council receive all documents at the same time as Member States' experts, and their experts systematically have access to meetings of Commission expert groups dealing with the preparation of delegated acts.*

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<sup>17</sup> OJ L 123, 12.5.2016, p. 1.

- (38) *In order to ensure uniform conditions for the implementation of this Regulation, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council<sup>18</sup>.*
- (39) Since the objective of this Regulation, *namely to improve the Union's protection against market manipulation on the wholesale energy market*, cannot be sufficiently achieved by the Member States, but can rather 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 in order to achieve *that* objective,

**HAVE ADOPTED THIS REGULATION:**

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<sup>18</sup> *Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers (OJ L 55, 28.2.2011, p. 13).*

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

Regulation (EU) No 1227/2011 is amended as follows:

- (1) The references to Regulations (EC) No 713/2009 and (EC) No 714/2009 and to Directive 2003/6/EC are replaced as follows:
- (a) the reference to ‘Article 15(1) of Regulation (EC) No 713/2009’ in Article 16(6) is replaced by a reference to ‘Article 22(5) of Regulation (EU) 2019/942’;
  - (b) the references to ‘Regulation (EC) No 714/2009’ in Article 2, point (1), second subparagraph, point (a), in Article 4(5) and (6), in Article 6(2), point (d), and in Article 8(6), second subparagraph, are replaced by references to ‘Regulation (EU) 2019/943’;
  - (c) the references to ‘Article 9 of Directive 2003/6/EC’ in Article 1(3), first subparagraph, and in Article 16(2), second subparagraph, are replaced by a reference to ‘Article 2 of Regulation (EU) No 596/2014’;
  - (d) the reference to ‘Article 11 of Directive 2003/6/EC’ in Article 2, point (9), is replaced by a reference to ‘Article 22 of Regulation (EU) No 596/2014’;
  - (e) the references to ‘Directive 2003/6/EC’ and to ‘Article 9 of that Directive’ in Article 16(3), point (b), are replaced by references to ‘Regulation (EU) No 596/2014’ and to ‘Article 2 of that Regulation’ respectively.
- (2) Article 1 is amended as follows:
- (a) **■ paragraph 2 is replaced by the following:**
    - ‘2. This Regulation applies to trading in wholesale energy products. It is without prejudice to the application of **Regulations (EU) No 648/2012\***, **(EU) No 596/2014\*\* and (EU) No 600/2014\*\*\* of the European Parliament and of the Council and of Directive 2014/65/EU of the European Parliament and of the Council\*\*\*\*** as regards activities involving financial instruments as defined **in Article 4(1), point (15), of Directive 2014/65/EU**, as well as to the

application of *Union* competition law to the practices covered by this Regulation.

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- \* Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories (OJ L 201, 27.7.2012, p. 1).
- \*\* ***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) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 (OJ L 173, 12.6.2014, p. 84).***
- \*\*\*\* ***Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).’;***

- (b) in *paragraph 3*, the following ▬ subparagraph is added:

‘The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall ▬ exchange relevant information and data on a regular, *if possible* quarterly, basis regarding potential breaches of Regulation (EU) No 596/2014 ▬ involving wholesale energy products covered by this Regulation.’;

(c) *paragraph 4 is replaced by the following:*

*‘4. The Agency’s Administrative Board shall ensure that the Agency carries out the tasks assigned to it pursuant to this Regulation and to Regulation (EU) 2019/942 of the European Parliament and of the Council\* and that the Agency allocates the necessary resources, including human resources, to fulfil the new obligations assigned to it.*

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\* *Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).’;*

(3) Article 2 is amended as follows:

(a) point (1) is amended as follows:

*(i) the second subparagraph is amended as follows:*

*- point (c) is replaced by the following:*

*‘(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;’;*

*- the following point is inserted:*

*‘(ca) information which is conveyed by a market participant, or by other persons acting on the market participant’s behalf, to a service provider trading on the market participant’s behalf and relating to the market participant’s pending orders in wholesale energy products, which is of a precise nature and relates directly or indirectly to one or more wholesale energy products; and’;*

- (ii) the third subparagraph is replaced by the following:

‘Information shall be considered 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***, 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 considered to be of ***a*** 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 future events.

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

*For the purposes of the first subparagraph of this point, information shall be considered to be directly or indirectly related to the wholesale energy product if it has a possible effect on the demand, supply or prices of a wholesale energy product, or on the expectations of the demand, supply or prices of a wholesale energy product.*

For the purposes of *the first subparagraph of this point*, information which, if it were made public, would be likely to significantly affect the prices of *the* wholesale energy products *means* information *that* a reasonable *market participant* would be likely to use as part of the basis of his or her **■** decision *concerning trading with wholesale energy products;*’;

(b) **■** point (2) *is replaced by the following:*

‘(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 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 more 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 *such* transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; 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;
- (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 *input* in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, 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, *or*, in accordance with [ ] Union or national law, of *a* natural *person who participates* in the decision to carry out activities for the account of the legal person concerned;’;

(c) *point (4) is amended as follows:*

(i) *points (a) and (b) are replaced by the following:*

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

(ii) *the following points are added:*

*‘(e) contracts relating to the storage of electricity or natural gas in the Union;*

*(f) derivatives relating to the storage of electricity or natural gas in the Union;’;*

(d) **point** (7) is replaced by the following:

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

(e) the following **point** is inserted:

‘(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;’;

(f) the following points are inserted:

‘(11a) “distribution system operator” means distribution system operator as defined in Article 2, point (6), of Directive 2009/73/EC and in Article 2, point (29), of Directive (EU) 2019/944;

(11b) “storage system operator” means storage system operator as defined in Article 2, point (10), of Directive 2009/73/EC or operator of an “energy storage facility” as defined in Article 2, point (60), of Directive (EU) 2019/944;

(11c) “LNG system operator” means LNG system operator as defined in Article 2, point (12), of Directive 2009/73/EC;’;

(g) the following points are **added**:

- ‘(16) “registered reporting mechanism” or “RRM” means a legal person **authorised** pursuant to this Regulation to **report or to** provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency **on its own behalf or** on behalf of market participants;
- (17) “inside information platform” or “IIP” means a person **authorised** pursuant to 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 marketplaces 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 marketplace allows another person to use its trading code so the person can electronically transmit orders to trade relating to a wholesale energy product directly to the organised marketplace, including arrangements which involve the use by a person of the *information technology* 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 marketplace” *or* “OMP” means an energy exchange, an energy broker, an energy capacity platform or any other *system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a manner that may result in a transaction*;
- (21) “order book” *means all the details of wholesale energy products executed at an OMP , including matched and unmatched orders as well as system-generated orders and life cycle events*;

- (22) *“benchmark” means an index as defined in Article 3(1), point 3, of Regulation (EU) 2016/1011 of the European Parliament and of the Council\*, 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;*
- (23) *“LNG trading” means bids, offers or transactions, including but not limited to those taking place over the counter or in an OMP, for the purchase or sale of LNG:*
- (a) that specify delivery in the Union;
  - (b) that result in delivery in the Union; or
  - (c) in which one counterparty re-gasifies the LNG at a terminal in the Union;
- (24) *“LNG market data” means records of bids, offers or transactions for LNG trading with corresponding information;*
- (25) *“LNG market participant” means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading;*
- (26) *“LNG price assessment” means the determination of a daily reference price for LNG trading in accordance with a methodology established by the Agency;*

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

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\* Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (OJ L 171, 29.6.2016, p. 1).’;

- (4) in Article 3(1), the following ■ subparagraph is added:

‘The use of inside information by cancelling or amending an order, *or any other trading action* 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.’;

- (5) Article 4 is amended as follows:

- (a) in paragraph 1, the following ■ subparagraph is added:

‘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 *prompt* access *to that information*, including *through a website or* a clear application programming interface, ■ and *a* complete, correct and timely assessment of *that* information by the public.’;



(b) paragraph 4 is replaced by the following:

‘4. The publication of inside information, including in aggregated form, in accordance with Regulation (EU) 2019/943 of the European Parliament and of the Council\* or Regulation (EC) No 715/2009, and with guidelines and network codes adopted pursuant to those Regulations shall constitute effective disclosure but not necessarily *timely and public disclosure within* the meaning of paragraph 1 of this Article.

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\* Regulation (EU) 2019/943 of the European Parliament and of the Council of 5 June 2019 on the internal market for electricity (OJ L 158, 14.6.2019, p. 54).’;

(c) *the following paragraph is inserted:*

‘4a. *By ... [12 months from date of entry into force of this amending Regulation], the Agency shall develop and operate a platform serving as a sector-specific electronic access point for inside information disclosed pursuant to paragraph 1.*’;

(6) the following article is inserted:

‘Article 4a

Authorisation and supervision of inside information platforms

1. An IIP shall operate only after the Agency has assessed whether that IIP complies with the requirements *set out in paragraphs 3, 4 and 5* and has authorised *its* operation. The Agency shall establish a register of IIPs which it has authorised pursuant to this paragraph. The register of *IIPs* shall be publicly available and shall contain information on the services for which the IIP is *authorised*. The Agency shall regularly review the compliance of IIPs with *paragraphs 3, 4 and 5*.

2. *IIPs registered by the Agency pursuant to Commission Implementing Regulation (EU) No 1348/2014\* and included in the Agency's list of IIPs shall be allowed to continue operating until the Agency has taken a decision on authorisation pursuant to this Article.*
3. An IIP shall have adequate policies and arrangements in place to make public the inside information as required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The inside information shall be made available *and easily accessible* for all purposes free of charge, *including through a website or an application programming interface*. The IIP shall efficiently and consistently disseminate such information in a *manner* that ensures *prompt* access to the inside information, on a non-discriminatory basis and in a manner that facilitates the consolidation of the inside information with similar data from other sources.
4. The inside information *that is* made public by an IIP *pursuant to* paragraph 3 shall include ■ at least ■ the following details, depending on the type of inside information:
  - (a) the message ID and *the* event status;
  - (b) the *date and time of the publication and the date and time of the beginning and the end* of the event;

- (c) the ■ name and *identification of* the market participant ■ ;
  - (d) the bidding or balancing zone concerned;
  - (e) *the type of information, such as unavailability, forecast and actual use; and*
  - (f) ■ where applicable:
    - (i) the type of unavailability and the type of event;
    - (ii) the unit of measurement;
    - (iii) the unavailable, available and installed or technical capacity;
    - (iv) *where the installed or technical capacity is unavailable*, the reason for the unavailability;
    - (v) the *type of fuel*;
    - (vi) the affected asset or unit and its identification code.
5. 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 *an OMP* or market participant shall treat all inside information collected in a non-discriminatory *manner* 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, *to* minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and *shall* have back-up facilities in place in order to offer and maintain its services ■ .

The IIP shall have *mechanisms* in place *allowing* inside information reports *to* be quickly and effectively checked *with regard to their* completeness, to identify omissions and obvious errors, and to request *receipt of a corrected version of such* reports.

6. *Where the Agency finds that an IIP has infringed any of the requirements laid down in paragraphs 1 to 5 of this Article, it shall, before withdrawing an authorisation pursuant to paragraph 7 of this Article, afford the IIP the appropriate procedural safeguards, including those referred to in Article 14(6), (7) and (8) of Regulation (EU) 2019/942.*
7. The Agency may withdraw the *authorisation* of an IIP *by means of a decision and remove it from the register* where the *IIP*:
  - (a) does not make use of the authorisation within 12 months of the date on which the authorisation was issued, expressly renounces the authorisation or has provided no services in the preceding six months;

- (b) obtained the authorisation by making false statements or by any other irregular means;
- (c) no longer meets the *requirements for authorisation set out in paragraphs 3, 4 and 5*;
- (d) *did not bring the infringement to an end; or*
- (e) has seriously and systematically infringed this Regulation.

*In the case of a decision as referred to in the first subparagraph of this paragraph, the Agency shall indicate the legal remedies available pursuant to Articles 28 and 29 of Regulation (EU) 2019/942.*

*An IIP whose authorisation has been withdrawn by the Agency shall inform all relevant market participants and shall ensure orderly substitution including the transfer of data to other IIPs, chosen by market participants, and the redirection of reporting flows to other IIPs. The Agency shall set a reasonable period of at least six months to ensure such orderly substitution. During that period the IIP shall ensure continuity of the services that it provides. The Agency may, however, set a shorter period if the continued operation of the IIP could jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of the authorisation.*

The Agency shall, without undue delay, notify the national **regulatory** authority in the Member State where the IIP is established of **any** decision to withdraw the **authorisation** of an IIP **pursuant to the first subparagraph and shall inform** the **market participants thereof**.

8. **By ... [12 months from the date of entry into force of this amending Regulation],** the Commission shall **adopt a delegated act in accordance with Article 20 to supplement this Regulation by specifying:**

- (a) the means by which an IIP **is to** fulfil the obligation to make public the inside information laid down in paragraph 3 of this Article;
- (b) the content **and any relevant further details** of the inside information **made public pursuant to paragraphs 3 and 4** of this Article in such a **manner** as to enable the publication of information required under this Article;
- (c) the specific organisational requirements for the implementation of paragraph 5 of this Article;

- (d) *the details concerning the process of withdrawing an authorisation of an IIP referred to in paragraph 7 of this Article;*
- (e) *the procedural safeguards referred to in paragraph 6 of this Article;*
- (f) *the details concerning the process of orderly substitution referred to in paragraph 7 of this Article;*
- (g) *the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an IIP.*

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\* *Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (OJ L 363, 18.12.2014, p. 121).’;*

■

(7) The following article *is inserted*:

‘Article 5a

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 otherwise function 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 **OMP** 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 that its systems are fully tested and properly monitored so 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 *that* engagement to the national regulatory *authority of the* Member State *where it is registered pursuant to Article 9(1)* and to the Agency.

The national regulatory authority of the Member State *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 trading system is subject, **■** key compliance and risk controls that *are* in place to ensure that the *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 *for five years* in relation to the *matters* referred to in this paragraph and shall ensure that those records are sufficient to enable the national regulatory authority of the Member State where the market participant is registered pursuant to Article 9(1) to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an OMP shall notify the *national regulatory authority of the* Member State *where the market participant is registered pursuant to Article 9(1)* and the Agency accordingly.

The national regulatory authority of the ■ Member State *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 *risk* controls referred to in paragraph 1 *of this Article* and evidence that those have been applied.

The market participant shall arrange for records to be kept *for five years* in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable the national regulatory authority of the Member State *where* the market participant *is registered pursuant to Article 9(1)* to monitor compliance with this Regulation.

4. This Article is without prejudice to the obligations *laid down in* Directive *2014/65/EU*.’ ■ ;

(8) *in Article 6, paragraph 1 is replaced by the following:*

*‘1. The Commission is empowered to adopt delegated acts in accordance with Article 20:*

*(a) to amend this Regulation by:*

- (i) aligning the definitions set out in Article 2, points (1), (2), (3) and (5), for the purpose of ensuring coherence with other relevant Union law in the fields of financial services and energy;*
- (ii) updating the definitions referred to in point (i) for the sole purpose of taking into account future developments on wholesale energy markets;*
- (b) to supplement this Regulation by establishing, taking into account national specificities, minimum thresholds for the identification of events which, if they were made public, would be likely to significantly affect the prices of the wholesale energy products.’;*

(9) **■** *Article 7 is amended as follows:*

*(a) paragraph 1 is replaced by the following:*

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

(b) *paragraph 3 is replaced by the following:*

*‘3. The Agency shall, at least on an annual basis, submit a report to the Commission on its activities under this Regulation and on the application by the Agency of this Regulation, and make that report publicly available. In that report the Agency shall assess, inter alia, the operation and transparency of different categories of marketplaces 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. That report may be combined with the report referred to in Article 15(2) of Regulation (EU) 2019/942.’;*

(10) *the following articles are inserted:*

‘Article 7a

Tasks and powers of *the Agency* with regard to LNG price assessments and LNG benchmarks

1. *The Agency* shall produce and publish a daily LNG price assessment *and a daily LNG benchmark*. For the purpose of the LNG price assessment *and the LNG benchmark, the Agency* shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.

■

2. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions laid down in this Regulation shall apply to LNG market participants. The powers conferred *to the Agency* 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

##### Publication of LNG price assessments and LNG benchmarks

1. The LNG price assessment shall be published daily, and by no later than 18:00 CET for the outright transaction price assessment. ■ In addition to the publication of the LNG price assessment, *the Agency* 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, *the Agency* may make use of the services of a third party.

#### Article 7c

##### Provision of LNG market data to *the Agency*

1. LNG market participants shall submit daily to *the Agency* the LNG market data, *free of charge, by means of the reporting channels established by the Agency*, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).

2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to be submitted before the publication of the daily LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article **21(2)**.
3. Where appropriate, *the Agency* shall, after consulting the Commission, issue guidance *with regard to*:
  - (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, the 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.

■

*Article 7d*  
*LNG market data quality*

1. *LNG market data shall include:*
  - (a) *the parties to the contract, including buy or 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 the applied conversion and exchange rates, if applicable;*

(b) *contract quantities shall be reported in the units specified in the contract and in MWh;*

(c) *arrival windows shall be reported in terms of delivery dates expressed in UTC format;*

(d) *the 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 this Regulation and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format;*



- (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 LNG benchmark.*

Article 7e

Business continuity

*The Agency* 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.’;

(11) Article 8 is amended as follows:

(a) *paragraph 1 is replaced by the following:*

*‘1. Market participants, or a person or an entity listed in paragraph 4, points (b) to (f) acting 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 intermediate or final beneficiaries of the transaction and any other relevant information. Market participants shall include information about their exposures, detailed by product, including the transactions that occur over the counter. While overall responsibility lies with market participants, once the required information is received from a person or an entity listed in paragraph 4, points (b) to (f), the reporting obligation on the market participant in question shall be considered to be fulfilled. The information referred to in this paragraph shall be provided through RRM.s.’;*

(b) the following *paragraphs are* inserted:

**‘1a.** For the purpose of reporting records of transactions *on the wholesale energy market*, including orders to trade, that are entered into, concluded or executed at OMPs, those *OMPs, or third parties on their behalf*, shall:

(a) make available to the Agency data relating to the order book, *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 paragraph 1 of this Article;*  
*or*

(b) upon the Agency’s request, give the Agency access *without delay* to the order book so that *the Agency* is able to monitor trading *on the wholesale energy market*.

*By ... [12 months from the date of entry into force of this amending Regulation], the Commission shall adopt implementing acts specifying the further details regarding the operation of this paragraph, including the specific arrangements for ensuring effective data reporting. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).*

***1b. LNG market participants and any other person or entity listed in paragraph 4, points (b) to (f), of this Article acting on their behalf shall systematically provide the Agency with a record of LNG market data, in accordance with the specifications laid down in the Implementing Regulation (EU) No 1348/2014.’;***

(c) in paragraph 2, the second subparagraph is replaced by the following:

‘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.’;

(d) paragraph 3 is replaced by the following:

‘3. The persons and entities referred to in paragraph 4, points (a) to (d), of this Article that have reported transactions in accordance with Regulation (EU) No 600/2014 or Regulation (EU) No 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 paragraphs 1a and 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.’;

(e) paragraph 4 is amended as follows:

(i) *the introductory part is replaced by the following:*

*‘For the purposes of paragraphs 1, 1a and 1b, information shall be provided by:’;*

(ii) point (d) is replaced by the following:

‘(d) an OMP, a trade-matching system or other person professionally arranging or executing transactions;’;

(f) paragraph 5 is replaced by the following:

- ‘5. Market participants shall provide *the Agency* 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 those facilities, and with inside information *that is* publicly disclosed *pursuant to* Article 4, for the purpose of monitoring trading on wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof, where possible, from existing sources.’;

(12) ■ Article 9 *is amended as follows*:

(a) *in paragraph 1, the first subparagraph is replaced by the following*:

‘1. Market participants entering into transactions which are required to be reported to *the Agency* pursuant to Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident.

*By ... [six months from the date of entry into force of this amending Regulation], market participants established or resident in a third country that enter into transactions that are required to be reported to the Agency pursuant to Article 8(1):*

(a) *shall designate a representative* in a Member State in which *the market participants* are active *on the wholesale energy markets, and shall* register with the national regulatory authority of that Member State. *The representative shall be designated by a written mandate and shall be authorised to act on the market participants’ behalf;*

- (b) *shall mandate their designated representative for the purpose of being addressed in addition to or on their behalf, by the national regulatory authorities or the Agency, on all issues necessary for the receipt of, compliance with and enforcement of decisions or requests for information issued in relation to this Regulation;*
- (c) *shall provide their designated representative with the necessary powers and means to guarantee their efficient and timely cooperation with the national regulatory authorities or the Agency and to comply with the decisions and requests for information of the national regulatory authorities or the Agency issued in relation to this Regulation, including providing access to the requested information; and*
- (d) *shall notify the name, email address, postal address and telephone number of their designated representative to the national regulatory authority of the Member State where that designated representative resides or is established and to the Agency.*

*The designation of a representative shall be without prejudice to legal actions which could be initiated against the market participant itself.’;*



(b) *paragraph 3 is replaced by the following:*

*‘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. On the basis of 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 that register. Subject to Article 17, the Agency shall make the European register of market participants, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed.’;*

(13) the following article ■ is inserted:

‘Article 9a

Authorisation and supervision of 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 established in the Union; and
- (b) the RRM meets the requirements laid down in *paragraph 3*.

The *Agency shall authorise an entity* to operate as *an RRM within a reasonable period of time and, to the extent possible, within three months of 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 to provide the services for which it has been authorised throughout the Union.

*RRMs registered by the Agency pursuant to Implementing Regulation (EU) No 1348/2014 and included in the Agency's list of RRM s shall be allowed to continue operating until the Agency has taken a decision on authorisation pursuant to this Article.*

An authorised RRM shall comply ■ with the conditions for authorisation referred to in this *paragraph and in paragraph 3*. An authorised RRM shall, without undue delay, notify *the Agency* of any material changes to the conditions for authorisation.

The Agency shall establish a register of *RRMs which it has authorised pursuant to this paragraph*. The register shall be publicly available and shall contain information on the services for which the RRM is authorised. *The register* shall be updated on a regular basis. ■

2. The Agency shall regularly review the compliance of RRM s with *paragraphs 1 and 3*. For that purpose, RRM s shall report on an annual basis about their activities to the Agency.

3. RRM shall have adequate policies and arrangements in place to *ensure the prompt reporting of* information as required under Article 8.

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

RRMs 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. *RRMs* shall maintain adequate resources and *shall* have back-up facilities in place in order to offer and maintain *their* services. ■

RRMs shall have *mechanisms* in place *allowing* transaction reports to be effectively checked *with regard to their* completeness, to 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 to request *receipt of a corrected version of such* reports.

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

4. *Where the Agency finds that an RRM has infringed paragraph 1, 2 or 3 of this Article, it shall, before withdrawing an authorisation pursuant to paragraph 5 of this Article, afford the RRM the appropriate procedural safeguards, including those referred to in Article 14(6), (7) and (8) of Regulation (EU) 2019/942.*
5. The Agency may withdraw the authorisation of an RRM *by means of a decision and remove it from the register* where *the* RRM:
  - (a) does not make use of the authorisation within 18 months of the date on which the authorisation was issued, expressly renounces the authorisation or has provided no services in the preceding 18 months;
  - (b) obtained the authorisation by making false statements or by any other irregular means;
  - (c) no longer meets the *requirements for authorisation set out in paragraphs 1 and 3; or*
  - (d) has seriously and systematically infringed this Regulation.

*In the case of a decision as referred to in the first subparagraph of this paragraph, the Agency shall indicate the legal remedies available pursuant to Articles 28 and 29 of Regulation (EU) 2019/942.*

An RRM *whose* authorisation has been withdrawn *by the Agency* shall *inform all relevant market participants and shall* ensure orderly substitution including the transfer of data to other RRMs, *chosen by market participants*, and the redirection of reporting flows to other RRMs. *The Agency shall set a reasonable period of at least six months to ensure such orderly substitution. During that period, the RRM shall ensure continuity of the services that it provides. The Agency may, however, provide a shorter period if the continued operation of the RRM could jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of the authorisation.*

The Agency shall, **■** without undue delay, notify the national *regulatory* authority in the Member State where the RRM is established of *any* decision to withdraw the authorisation of an RRM *pursuant to the first subparagraph and shall inform the market participants thereof.*

6. ***By ... [12 months from the date of entry into force of this amending Regulation], the Commission shall adopt a delegated act in accordance with Article 20 to supplement this Regulation by specifying:***
- (a) the means by which an RRM ***is to*** fulfil the obligation referred to in paragraph 1 of this Article; ■
  - (b) the specific organisational requirements for the implementation of paragraphs 2 and 3 of this Article;
  - (c) ***the details concerning the process of withdrawing an authorisation of an RRM referred to in paragraph 5 of this Article;***
  - (d) ***the procedural safeguards referred to in paragraph 4 of this Article;***
  - (e) ***the details concerning the process of orderly substitution referred to in paragraph 5 of this Article;***
  - (f) ***the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an RRM. ’;***

(14) in Article 10, paragraphs 1 and 2 are replaced by the following:

- ‘1. **The Agency** 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 authorities of the Member States, national competition authorities, ESMA, **EUROFISC** and other relevant authorities at Union level. Before establishing such mechanisms, **the Agency** shall consult with those authorities.

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

2. National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the competent financial authorities of the Member States, the national competition authorities, the national tax authorities ■ and other relevant authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those *authorities on such mechanisms, unless such mechanisms were established before ... [the date of entry into force of this amending Regulation].* **The Agency shall, where appropriate, issue non-binding guidelines to facilitate the establishment of such mechanisms by national regulatory authorities.**



National regulatory authorities shall give access to the mechanisms referred to in the first subparagraph of this paragraph ■ only to authorities which have set up systems enabling the national regulatory authorities to meet the requirements set out in Article 12(1).’;

(15) Article 12 is amended as follows:

(a) in paragraph 1, the second subparagraph is replaced by the following:

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

(b) paragraph 2 is replaced by the following:

- ‘2. *By ... [12 months from the date of entry into force of this amending Regulation], the Agency shall develop a reference centre containing information on Union wholesale energy market data (the ‘Reference Centre’).* Subject to Article 17, *the Agency shall make public, by means of the Reference Centre*, parts of the information which it possesses, provided that commercially sensitive information on individual market participants, individual transactions or individual marketplaces are not disclosed and cannot be identified from the information made public. *The Agency may also make public, by means of the Reference Centre, aggregated information on OMPs, IIPs and RRM in accordance with the applicable data protection law, excluding commercially sensitive information.*

*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 in accordance with transparent rules which it shall draw up and make publicly available.’;*

■

(16) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

- ‘1. National regulatory authorities shall ensure that the prohibitions laid down in Articles 3 and 5 and the obligations laid down in Articles 4, 7c, 8, 9 and 15 are complied with and enforced.

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

Each Member State shall ensure that its national regulatory authority has the investigatory and enforcement powers necessary for the exercise of the functions referred to in the first and second subparagraphs. Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

- (a) directly;
- (b) in collaboration with other authorities; ■

(c) by application to the competent national judicial authorities; **or**

(d) *following a recommendation by the Agency.*

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

(b) the following paragraphs ■ are added:

- ‘3. In order to combat breaches of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may, *in close and active cooperation with the relevant national regulatory authorities*, carry out investigations by exercising the powers conferred *on* it by and in accordance with Articles 13a, *13b and 13c*.

4. *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 authorities concerned of that Member State. The Agency may 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 breach.*

*The Agency may continue to exercise its powers in the remaining jurisdictions of those national regulatory authorities that have not raised an objection pursuant to the first subparagraph, point (a). The Agency shall not exercise its powers if an investigation has already been conducted on the same facts and has concluded on the existence or the absence of a breach.*

*The national regulatory authority shall inform the Agency of its objection within three months of being informed pursuant to the first subparagraph. In such cases, the national regulatory authority shall cooperate with the Agency, including by:*

- (a) sharing information and findings relevant for the Agency to exercise its powers under paragraph 3 in other relevant jurisdictions concerned; and*
- (b) participating, upon the request of the Agency, in an investigatory group established pursuant to Article 16(4), point (c).*

*The Agency shall inform the Commission of the establishment of the investigatory group and, upon the request of one of the national regulatory authorities concerned, the Agency may invite the Commission to participate, as an observer, in that investigatory group.*

5. The Agency may exercise its powers to ensure that the prohibitions set out in Articles 3 and 5 ■ are enforced where:

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

■

- (b) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not **■** take the necessary measures *as soon as possible* to comply with the request of the Agency pursuant to Article 16(4), point (b), *where there is a cross-border impact*;
  - (c) *without prejudice to paragraph 4, the national regulatory authority requests the Agency to exercise its powers with regard to acts that, even if not falling within the scope of point (a) or (b) of this paragraph, have a cross-border impact.*
6. *The Agency may exercise its powers to ensure that the obligations laid down in Article 4 are fulfilled where the relevant inside information is likely to significantly affect the prices of wholesale energy products for delivery in at least two Member States.*
7. *The Agency may exercise its powers to ensure that the obligations laid down in Article 8 are fulfilled where:*
- (a) *a suspected breach affects the monitoring referred to in Article 7 by the Agency, of trading activity in wholesale energy products in at least two Member States; or*

*(b) a suspected breach affects the quality of information sharing referred to in Article 10 in at least two Member States.*

8. The Agency may exercise its powers to ensure that the obligations laid down in Article 15 are fulfilled where the persons referred to in that Article are professionally arranging or executing transactions in wholesale energy products for delivery in at least *two* Member States.
9. *In exercising its powers pursuant to paragraphs 5 to 8, the Agency may give priority to the cases with the most significant cross-border impact. For that purpose, the Agency shall establish criteria for identifying the cases with the most significant cross-border impact, after consulting and in cooperation with the national regulatory authorities.*
10. *For the purpose of establishing whether the conditions for the exercise of the Agency's powers set out in paragraphs 5, points (a) and (b), 6, 7 and 8 are met, the delivery of wholesale energy products within a bidding or balancing zone that encompasses the territory of at least two Member States shall be considered to be delivery in a single Member State.*

*This paragraph shall be without prejudice to the possibility of a national regulatory authority concerned to submit a request pursuant to paragraph 5, point (c) or to object pursuant to paragraph 4.*

**I**



11. Upon completion of its actions taken to exercise its powers pursuant to *paragraphs 5 to 8*, the Agency shall draw up *an investigation* report *setting out the Agency's findings*. *The investigation* report shall *also include all evidence on which the findings were based*. If the Agency *considers in the investigation report* that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member States concerned accordingly and require that *they take the necessary measures including, as appropriate*, in accordance with *Article 18*. *In the investigation report*, the Agency may *also* recommend certain follow-up *measures* to the relevant national regulatory authorities, and, where necessary, inform the Commission. *Within three months of the receipt of the investigation report, the relevant national regulatory authorities shall communicate to the Agency and, where necessary, to the Commission, the measures that they consider to be necessary*.
12. *The Agency shall, on a regular basis and in any event at least once a year, submit summaries of the reports that it has drawn up, in an aggregated and anonymised form, to the European Parliament and to the Council. Such summaries and their content shall be treated as confidential.*’;

(17) the following articles ■ are inserted:

‘Article 13a

On-site inspections by the Agency

1. The Agency shall prepare and conduct on-site inspections in close cooperation ***and in coordination*** with the relevant authorities of the Member State concerned.
2. In order to fulfil its obligations as laid down in ***Article 13(5) to (8)***, the Agency may conduct all necessary on-site inspections at ***the*** premises of the persons subject to the investigation ***where business records could be kept***. Where the proper conduct and efficiency of the on-site inspection so require, the Agency may carry out that inspection without prior announcement ***to the persons subject to the investigation***.
3. ***To the extent necessary for the on-site inspection***, the officials of, and persons authorised or appointed by, the Agency to conduct that inspection ***shall be empowered, with respect to the persons subject to a decision adopted by the Agency pursuant to paragraph 6, to:***
  - (a) ***enter the relevant premises of those persons;***
  - (b) ***examine the books and other records related to their business, irrespective of the medium on which they are stored;***

- (c) *take or obtain in any form copies of or extracts from such books or records;*
- (d) *seal any business premises and books or records for the period and to the extent necessary for the inspection;*
- (e) *ask any representative or member of staff of those persons for explanations on facts or documents relating to the subject-matter and purpose of the on-site inspection and to record the answers.*

*Except in duly substantiated cases, seals referred to in the first subparagraph, point (d) shall not be affixed for more than 72 hours.*

4. *If a reasonable suspicion exists that business records related to the subject-matter of an on-site inspection, which may be relevant to prove a breach of this Regulation, are being kept in private premises of directors, managers or other members of staff of businesses concerned by an investigation, the Agency may by decision carry out an on-site inspection in such private premises. In such cases, the decision referred to in paragraph 6 shall also state the reasons that have led the Agency to conclude that a reasonable suspicion exists.*

■

5. The officials of, and persons authorised or appointed 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 on-site inspection.
6. The persons subject to investigation 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 on-site inspection, *indicate* the date on which it is to begin, the *periodic penalty payments provided for in Article 13g where the person concerned does not submit to the on-site inspection in accordance with paragraph 3* of this Article, as well as the right to have the decision reviewed by the Court of Justice of the European Union (the ‘Court of Justice’). The Agency shall consult the national regulatory authority of the Member State where the on-site inspection is to be conducted prior to adopting such decision.
7. Officials of, and persons authorised or appointed by, the national regulatory authority of the Member State where the on-site inspection is to be conducted shall, upon the request of the Agency, actively assist the officials of, and persons authorised or appointed by, the Agency. To that end they shall *have* 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, and persons authorised or appointed by, the Agency find that a person opposes an on-site inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall **provide** them, or other relevant national regulatory authorities, **with** 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 national judicial authority in accordance with the applicable national law, the Agency shall apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure. ***In the cases referred to in paragraph 4, an on-site inspection shall not be carried out without the prior authorisation of a national judicial authority.***

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 on-site inspection.

For the purposes of the first subparagraph, point (b), of this paragraph, 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 **Articles 28 and 29** of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.

Article 13b  
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 laid down *in Article 13(5) to (8)*.  
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 is not to be incorrect or misleading.

2. For the purpose of information requests as referred to in paragraph 1 of this Article, the Agency shall **also** have the power to adopt decisions. In such a decision the Agency shall, in addition to the elements listed in paragraph 1 of this Article, indicate the ***person's obligation to respond to the request, the periodic penalty payments provided for in Article 13g where the person concerned does not comply with the request, and the right*** to have the decision reviewed by the Court of Justice.

***By way of derogation from*** Articles 28 and 29 of Regulation (EU) 2019/942, ***the Agency's decision shall be subject to review only by the Court of Justice.***

3. The persons in receipt of a request for information pursuant to paragraph 1 or 2, or their representatives, shall supply the information requested. Those persons shall be fully responsible for ensuring that the supplied information is complete, correct and not misleading.
4. Where the officials of, and persons authorised or appointed by, the Agency find that a person ***does not comply with a request for*** information ■, the national regulatory authority of the Member State concerned shall, ***at the Agency's request, provide the Agency with*** the necessary assistance in ensuring the fulfilment of the obligation laid down in paragraph 3, including through the imposition of ***fin***es in accordance with the applicable national law.



5. Where the officials of, and persons 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 referred to in paragraph 1 or the decision referred to in paragraph 2 to the national regulatory authorities of the Member States concerned.

#### *Article 13c*

##### *Power to take statements*

1. *In order to fulfil its obligations under Article 13(5) to (8), the Agency may interview and take statements from any person who consents to being interviewed for the purpose of collecting information relating to the subject-matter of an investigation. The Agency may record the answers.*
2. *Where an interview pursuant to paragraph 1 is conducted at the premises of the person concerned, the Agency shall inform the national regulatory authority of the Member State on whose territory the interview takes place. The officials of the national regulatory authority of that Member State may assist the officials of, and persons authorised or appointed by, the Agency to conduct the interview.*

Article 13d  
Procedural safeguards

1. The Agency shall carry out on-site inspections, *request information and take statements* in full respect of the procedural safeguards of *persons subject to an investigation*, 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 *before the adoption of the investigation report pursuant to Article 13(11)*;
  - (e) *the right to receive a copy of the record of interview and either approve it or add observations to it.*

*The invitation to comment on facts pursuant to the right referred to in point (d) shall include a summary of the facts concerning the person in question and shall indicate an adequate time limit for submitting comments. In duly substantiated cases where necessary to preserve the confidentiality of the on-site inspection or of an on-going or future administrative or criminal investigation by a national authority, the Agency may decide to defer the invitation to comment.*

2. The Agency shall seek evidence for and against the *persons subject to an investigation*, and carry out on-site inspections, *request information and take statements* objectively and impartially and in accordance with the principle of the presumption of innocence.
3. The Agency shall carry out on-site inspections, *request information and take statements* in full respect of applicable confidentiality and Union data protection rules.
4. *Article 14(6) of Regulation (EU) 2019/942 shall not apply to the Agency's decisions adopted pursuant to Article 13a(6) or Article 13b(2).*

#### Article 13e

#### Mutual assistance

In order to ensure compliance with the relevant requirements set out in *Articles 13 to 13c* national regulatory authorities and the Agency shall assist each other *in the course of an investigation*.

*Article 13f*  
*Investigating officer*

- 1. In order to fulfil its obligations under Article 13(5) to (8), the Agency may, where it considers to be appropriate to ensure the effectiveness and efficiency of the investigation and taking into account its available internal resources, appoint a dedicated investigating officer within the Agency to lead the investigation.*
- 2. In order to carry out his or her tasks, the investigating officer may exercise the powers available to the Agency, including the powers set out in Articles 13a, 13b and 13c, while respecting the procedural safeguards set out in Article 13d. 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 that are relevant for carrying out the investigation.*

*Article 13g*  
*Periodic penalty payments*

1. *The Agency shall, by means of a decision, impose a periodic penalty payment in respect of a person subject to an investigation in order to compel that person:*
  - (a) *to submit to an on-site inspection ordered by a decision adopted pursuant to Article 13a(6);*
  - (b) *to supply the information requested by a decision adopted pursuant to Article 13b(2).*
2. *The periodic penalty payment shall be imposed on a daily basis until the person concerned complies with the relevant decisions referred to in Article 13a(6) or Article 13b(2).*
3. *Periodic penalty payments shall be effective and proportionate. To that effect, the amount of a periodic penalty payment shall be, in the case of legal persons, 3 % of the average daily turnover in the preceding business year or, in the case of natural persons, 2 % of the average daily income in the preceding calendar year. A periodic penalty payment shall be calculated from the date stipulated in the decision imposing the periodic penalty payment.*

4. *A periodic penalty payment may be imposed for a period of no more than six months from the notification of the Agency's decision.*
5. *By way of derogation from Articles 28 and 29 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.*

#### *Article 13h*

##### *Procedural safeguards with regard to periodic penalty payment decisions*

1. *Notwithstanding Article 14(6) of Regulation (EU) 2019/942, before taking any decision imposing a periodic penalty payment under Article 13g of this Regulation, the Agency shall give the persons to whom it intends to address such decision the opportunity to be heard on the Agency's findings. The Agency shall base its decisions only on findings on which the persons concerned have had the opportunity to comment.*
2. *The rights of defence of the persons concerned shall be fully respected throughout the investigation. They shall be entitled to have access to those documents in the Agency's file that are relevant for the Agency's decision to impose the periodic penalty payment, 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 internal preparatory documents of the Agency.*

### *Article 13i*

#### *Nature, enforcement and allocation of periodic penalty payments*

- 1. Periodic penalty payments imposed pursuant to Article 13g shall be of an administrative nature.*
- 2. Periodic penalty payments imposed pursuant to Article 13g shall be enforceable.*

*Enforcement shall be governed by the applicable national procedural rules of the Member States concerned.*

*The order for its enforcement shall be appended to the Agency's decision without any other formality than verification of the authenticity of the decision by the national authority which the government of each Member State shall designate for that purpose and which it shall make known to the Agency and to the Court of Justice.*

*When the designated national authority has completed the formalities referred to in the third subparagraph, upon application by the Agency, the Agency may proceed to enforcement in accordance with the applicable national law, by bringing the matter directly before the designated national authority.*

*Enforcement may be suspended only by a decision of the Court of Justice.  
However, the courts of the Member States concerned shall have jurisdiction over  
complaints that enforcement is being carried out in an irregular manner.*

3. *The amounts of the periodic penalty payments shall be allocated to the general  
budget of the European Union.*

#### *Article 13j*

##### *Review by the Court of Justice*

*The Court of Justice shall have unlimited jurisdiction to review decisions of the Agency  
imposing periodic penalty payments. It may annul, reduce or increase the periodic  
penalty payment imposed.’;*



(18) Article 15 is ***replaced by the following***:

‘Article 15

Obligations of persons professionally arranging or executing transactions

1. Any person professionally arranging ■ transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, ***whether placed on or outside an OMP, could breach Article 3, 4 or 5, shall notify the Agency and the relevant national regulatory authority without further delay and in any event no later than four weeks from the day on which that person becomes aware of the suspicious event.***
2. ***Any person professionally executing transactions under Article 16 of Regulation (EU) No 596/2014 who also executes 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 an OMP, could breach Article 3, 4 or 5 of this Regulation, shall notify the Agency and the relevant national regulatory authority without further delay and in any event no later than four weeks from the day on which that person becomes aware of the suspicious event.***

3. *The persons referred to in paragraphs 1 and 2 shall establish and maintain effective arrangements, systems and procedures to:*
- (a) identify *potential 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;
  - (c) *detect and report suspicious orders and transactions.*
4. *Without prejudice to Regulation (EU) No 596/2014, persons professionally arranging or executing transactions shall be subject to the rules of notification of the Member States in which the market participant involved in the potential breach is registered and where the wholesale energy product is delivered. Such notification shall be addressed to the national regulatory authorities of those Member States.*

5. *By ... [12 months from the date of entry into force of this amending Regulation] and every year thereafter, the Agency shall, in cooperation with national regulatory authorities, issue and make public a report with aggregated information in compliance with applicable data protection law, excluding commercially sensitive information, on the implementation of this Article, in particular with regard to:*
- (a) the arrangements, systems and procedures referred to in paragraph 3 and their effectiveness;*
  - (b) the national regulatory authorities' analysis of suspicious transactions, response to poor quality reporting and non-reporting of suspicious transactions and related activities with regard to enforcement and penalties.';*

(19) Article 16 is amended as follows:

(a) *paragraph 1 is amended as follows:*

(i) *the second subparagraph is replaced by the following:*

*‘The Agency shall, as appropriate, publish non-binding guidance on:*

(a) *the application of the definitions set out in Article 2, including with regard to 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 Article 2, point (1); and*

(b) *non-exhaustive indicators and examples of market behaviour relating to market manipulation, as well as insider trading as referred to in Article 3.’;*

- (ii) ■ the fourth subparagraph is replaced by the following:

‘National regulatory authorities, competent financial authorities of the Member States, national competition authorities and national tax authorities **shall** establish appropriate forms of cooperation in order to ensure **timely**, effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, to judicial proceedings and to the enforcement of this Regulation and of the relevant financial and competition law.’;

- (b) in paragraph 2, the following ■ subparagraph is added:

‘Before adopting a ■ decision finding **a breach** of this Regulation, the national regulatory authority **may** inform the Agency and provide it with a summary of the case and the envisaged decision **in an official language of the Member State concerned. After adopting a decision finding a breach of this Regulation, the national regulatory authority shall provide that decision to the Agency, including information on the date of its adoption**, the name of the persons subject to penalties, the Article of this Regulation that has been breached and the penalty imposed. **At the same time, the national regulatory authority shall indicate to the Agency what information it has disclosed to the public as referred to in Article 18(6) and shall promptly inform the Agency of any subsequent changes to such information. The Agency shall maintain a public list of information that the national regulatory authorities have disclosed to the public as referred to in Article 18(6).**’;

(c) *paragraph 3 is amended as follows:*

(i) *point (a) is replaced by the following:*

*‘(a) national regulatory authorities shall process reports of possible breaches of this Regulation without undue delay and, if possible, within one year of the date of receipt of those reports , 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 Regulation (EU) No 596/2014 and which affect financial instruments subject to Article 2 of that Regulation; for those purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;’;*

(ii) **■** the following point **■** is added:

*‘(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 tax fraud.’;*

(20) the following articles ■ are inserted:

‘Article 16a

Delegation of tasks and responsibilities

1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to ***the Agency or to another*** national regulatory ***authority*** subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that ***are*** to be complied with before their national regulatory authorities enter into ■ 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 assist national regulatory authorities by issuing non-binding guidance or exchanging best practices on the delegation of tasks and responsibilities between competent national regulatory authorities.***

2. ***The delegation of tasks and responsibilities shall result in the reallocation of competences laid down in this Regulation. The law of the Member States where the delegate is located shall govern the procedure, enforcement and administrative and judicial review relating to the delegated responsibilities.***

3. The national regulatory authorities shall **notify** the Agency of **any** delegation agreements into which they intend to enter. They shall enter into those agreements at the earliest one month after informing the Agency.
4. The Agency may **issue** an opinion on **an** intended delegation agreement **notified pursuant to paragraph 3** within one month of **receipt of the notification**.
5. The Agency shall publish, by appropriate means, any delegation agreement concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.

#### Article 16b

##### Guidelines and recommendations

1. The Agency shall, with a view to **establishing** consistent, efficient and effective supervisory practices within the Union, and to **ensuring** 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 to 5a, 8, 9 and 9a and Article 10(1)**.



2. The Agency shall, *within an adequate and realistic timeframe*, conduct *appropriate* public consultations *with 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 *take due account of* those guidelines and recommendations.
4. ■ National regulatory *authorities may inform the Agency on a regular basis of the implementation of the guidelines or recommendations addressed to them.*
5. *If required by a guideline or recommendation, market participants shall notify the Agency about the implementation of the specific guideline or recommendation. Upon the Agency's request, market participants shall substantiate such notification in a clear and detailed manner.*
6. *Within 12 months of the issuance of guidelines or recommendations pursuant to paragraph 1, the Agency may conduct a consultation, including with national regulatory authorities or market participants, to assess the appropriateness and effectiveness of those guidelines or recommendations.*

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

(21) in Article 17, paragraph 3 is replaced by the following:

‘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 cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union law.’;

(22) Articles 18 and 19 are replaced by the following:

### ***‘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 shall 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 penalties and *without prejudice to* 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 *fin*es and other administrative measures in relation to the breaches of this Regulation as referred to in Article 13(1).

The Member States shall notify, in detail, those provisions to the Commission and to the Agency and shall notify them without delay of any subsequent amendment affecting those provisions.

2. *Where the legal system of the Member State does not provide for administrative fines, this Article may be applied in such a manner that the fining procedure is initiated by the competent authority and imposed by competent national courts, while ensuring that those legal remedies are effective and have an effect equivalent to the administrative fines imposed by supervisory authorities. In any event, the fines imposed shall be effective, proportionate and dissuasive. Those Member States shall notify the Commission of the provisions of their laws which they adopt pursuant to this paragraph by ... [24 months from the date of entry into force of this amending Regulation] and shall notify the Commission, without delay, of any subsequent amendment affecting them.*

3. Member States shall, in accordance with national law and subject to the *ne bis in idem* principle, ensure that the national regulatory authorities have the power to impose at least the following administrative fines and other administrative measures with regard to breaches of this Regulation:
- (a) require the breach to be brought to an end;
  - (b) order 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) impose periodic penalty payments;
  - (e) impose administrative *fines*.

4. With regard to natural persons, maximum administrative *fin*es referred to in paragraph 3, point (e), shall be as follows:

- (a) for breaches of Articles 3 and 5, at least EUR 5 000 000;
- (b) for breaches of Articles 4 and 15, at least EUR 1 000 000;
- (c) for breaches of Articles 8 and 9, at least EUR 500 000.

Notwithstanding paragraph 3, *point* (e), the amount of the administrative fine shall not exceed 20 % of the yearly income in the preceding calendar year of the natural person concerned. Where the natural person has directly or indirectly benefited financially from the breach, the amount of the administrative fine shall be at least equal to that benefit.

5. With regard to legal persons, maximum administrative *fin*es referred to in paragraph 3, point (e), shall be as follows:

- (a) for breaches of Articles 3 and 5, at least 15 % of the total annual turnover in the preceding business year;
- (b) for breaches of Articles 4 and 15, at least 2 % of the total annual turnover in the preceding business year;
- (c) for breaches of Articles 8 and 9, at least 1 % of the total annual turnover in the preceding business year.

Notwithstanding paragraph 3, *point* (e), the amount of the administrative fine shall not exceed 20 % of the total annual turnover in the preceding business year of the legal person concerned. Where the legal person has directly or indirectly benefited financially from the breach, the amount of the administrative fine shall be at least equal to that benefit.

6. 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.

7. *Member States shall ensure that when determining the type and level of administrative fines and other administrative measures, national regulatory authorities take into account all relevant circumstances, including, where appropriate:*
- (a) the gravity and duration of the infringement;*
  - (b) the degree of responsibility of the person responsible for the infringement;*
  - (c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total annual turnover of a legal person or the yearly income of a natural person;*
  - (d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;*
  - (e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;*
  - (f) previous infringements by the person responsible for the infringement;*

- (g) *measures taken by the person responsible for the infringement to prevent its repetition; and*
  - (h) *the duplication of criminal and administrative proceedings and fines for the same infringement against the person responsible for the infringement.*
- 8. *In the exercise of their powers to impose administrative fines and other administrative measures under paragraph 1, second subparagraph, of this Article, national regulatory authorities shall cooperate closely to ensure that the exercise of their supervisory and investigative powers, and the administrative fines that they impose, and the other administrative measures that they take, are effective and appropriate under this Regulation. They shall coordinate their actions in accordance with Article 16(2) in order to avoid duplication and overlaps when exercising their supervisory and investigative powers and when imposing administrative fines in respect of cross-border cases.*
- 9. *By ... [three years from the date of entry into force of this amending Regulation] and every three years thereafter, the Commission shall submit a report to the European Parliament and to the Council, assessing whether penalties for breaches of this Regulation are provided for and applied consistently across the Member States.*

**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 of the Union institutions and bodies, 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. Those arrangements may concern aspects of common interest, such as methodologies of data collection, analysis and assessment of data or other information, and other areas of expertise.’;*



(23) *Article 20 is amended as follows:*

(a) *paragraphs 2 and 3 are replaced by the following:*

*‘2. The power to adopt delegated acts referred to in Article 6(1), points (a) and (b), shall be conferred on the Commission for a period of five years from 28 December 2011. The power to adopt delegated acts referred to in Article 4a(8), Article 6(1), point (c), and Article 9a(6) shall be conferred on the Commission for a period of five years from ... [date of entry into force of this amending Regulation].*

*The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five 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 three months before the end of each period.*

3. *The delegation of power referred to in Article 4a(8), Article 6(1) and Article 9a(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.*’;

(b) *paragraph 5 is replaced by the following:*

‘5. *A delegated act adopted pursuant to Article 4a(8), Article 6(1) or Article 9a(6) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two 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 two months at the initiative of the European Parliament or of the Council.*’;

(24) *the following article is inserted:*

***‘Article 21a***

***Report and review***

1. *By 1 June 2027, and every five years thereafter, the Commission shall, after consulting relevant stakeholders, 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. On the basis of those assessments, the Commission shall draw up a report and submit it without undue delay to the European Parliament and to the Council. Those reports shall be accompanied, where appropriate, by legislative proposals.*
2. *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 on the Union wholesale energy markets and shall submit a report to the European Parliament and to the Council. The report may propose appropriate measures that may include the submission of a legislative proposal.’.*

Article 2  
Amendments to Regulation (EU) 2019/942

Regulation (EU) 2019/942 is amended as follows:

- (1) in Article 6, paragraph 8 is deleted.
- (2) **■** Article 12 *is amended as follows*:
  - (a) *point (c) is replaced by the following*:

‘(c) pursue and coordinate investigations pursuant to Articles 13 to **13c** and Article 16 of Regulation (EU) No 1227/2011.’;
  - (b) *the following points are added*:

‘(d) *authorise and supervise inside information platforms and registered reporting mechanisms pursuant to Articles 4a and 9a of Regulation (EU) No 1227/2011*;
  - (e) *have the power to impose periodic penalty payments in the cases referred to in Article 13g of Regulation (EU) No 1227/2011.*’;

(3) in Article 32, paragraph 1 is replaced by the following:

- ‘1. Fees shall be due to ACER for collecting, handling, processing and analysing of information reported by market participants, or by persons or entities reporting on their behalf, pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of that Regulation. 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 investigatory powers pursuant to Articles 13 to **13c** and Article 16 *of* Regulation (EU) No 1227/2011.’.

■

### Article 3

#### Entry into force *and application*

1. This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.
2. *By way of derogation from paragraph 1, the following dates of application shall apply:*
  - (a) *Article 1, points (6) and (13), as regards Article 4a (1) to (7) and Article 9a (1) to (5) of Regulation (EU) No 1227/2011, shall apply from the date on which the delegated acts adopted pursuant to those points enter into force;*
  - (b) *Article 1, point (10), as regards Articles 7a to 7e of Regulation (EU) No 1227/2011, shall apply from 1 January 2025;*
  - (c) *Article 1, point (18), as regards Article 15(2) of Regulation (EU) No 1227/2011, shall apply from ... [six months from the date of the entry into force of this amending Regulation].*

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

Done at ■ ...,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*

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