



Council of the
European Union

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

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

The Annex contains the consolidated compromise text of the above draft Regulation, subject to revisions by the legal linguists of both Institutions.

REGULATION (EU) 2024/...

OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of ...

amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in 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 Committee¹,

After consulting the Committee of the Regions,

Acting in accordance with the ordinary legislative procedure²,

Whereas:

¹ *OJ C 293, 18.8.2023, p. 138.*

² *Position of the European Parliament of ... (not yet published in the Official Journal) and decision of the Council of ...*

- (1) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against market **abuse**, Regulation (EU) No 1227/2011 should be amended to further **ensure** 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 potential cross-border market abuse cases addressing the shortcomings identified in the current framework.
- (2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council³, including with respect to the definitions of market manipulation and inside information respectively. **Therefore**, the definition of market manipulation in Regulation (EU) No 1227/2011 should be adjusted to **align 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 adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products. **In this regard, with a view to the alignment with Regulation (EU) No 596/2014, the notion of any other behaviour should include, but should not be limited to actions such as quote stuffing, painting the tape, momentum ignition.**

³ 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 adjusted to *align with* Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the *wholesale energy products* concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.
- (4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of *Union* competition law to the practices covered by this Regulation.
- (5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.
- (6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the ‘Agency’ ■) should be able to make that information available to market participants and the wider public *in an accessible format* with a view to contributing to enhanced market knowledge. This should include the possibility for *the Agency* to publish *aggregated* information on organised market places, IIPs, RRM *in accordance with* applicable data protection *law* in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.

- (6a) *Where information is not, or is no longer, sensitive from a commercial point of view, the Agency should be able to make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements, with a view to contributing to enhanced market knowledge. This is intended to help to build confidence in the market and to foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make the information available for scientific and transparency purposes in a fair and transparent manner.*
- (6b) *In order to further enhance market transparency in the Union wholesale energy market and to contribute to the Common Union energy data strategy, the Agency should develop and maintain a digital reference centre of information. In this centre, the Agency should make public, in a user-friendly format, parts of the information which it collects according to this Regulation, including, among others, information regarding the trading of over-the-counter wholesale energy contracts, power purchase agreements and contracts for difference. Any data published in the reference centre of information should be subject to Article 17 of this Regulation and applicable data protection law.*
- (7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 **should** be duly authorized pursuant to the requirements of that Directive.
- (8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale energy markets. Many market participants use algorithmic trading and **high-frequency** algorithmic techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.
- (9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data that the Agency receives is of utmost importance to ensure effective monitoring and detection of potential breaches to achieve the objective of Regulation (EU) No 1227/2011. Inconsistencies in the quality, formatting, reliability and cost of trading data have a **negative** effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for it to effectively carry out its tasks and functions.

- (10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, new balancing markets, contracts for balancing markets, *allocated transmission capacity* and products that have potential delivery in the Union. Organised market places should be required to *make available to the Agency data relating to the order book or, upon request, give the Agency 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.
- (10a) *The reporting obligations on market participants should be minimised by collecting the required information or parts thereof from existing sources, where possible. Market participants are not able to record and report organised market place data with ease, therefore organised market place data should be made available to the Agency by the relevant organised market places or by third parties acting on their behalf.*
- (10b) *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 the reporting by national regulatory authorities, should be undertaken in accordance with Regulation (EU) 2016/679 of the European Parliament and of the Council, and any exchange or transmission of information by the Agency should be undertaken in accordance with Regulation (EU) 2018/1725 of the European Parliament and of the Council.*

- (11) Inside Information Platforms (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 enhance transparency. *Market participants may, only in addition, continue to use other channels, including market participants' websites, to disclose the inside information.* To ensure trust in the IIPs they should be authorised and registered, *as it is already the case pursuant to Article 11 of Commission Implementing Regulation (EU) No 1348/2014. IIPs, including those registered by the Agency under that Implementing Regulation, should comply with the conditions 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 pursuant to Articles 14(6) to (8) of Regulation (EU) 2019/942. 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 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 Article 4a of this Regulation. IIPs should have mechanisms in place allowing to quickly and effectively check inside information reports. While developing such mechanism, IIPs may involve market participants.*
- (12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRMs should be authorised by the Agency, *as it is already the case pursuant to Article 11 of Implementing Regulation (EU) No 1348/2014. RRMs, including those registered by the Agency under that Implementing Regulation, should* comply with the conditions for authorisation and *with* data protection law. The Agency should *maintain* a register of all RRMs *it has authorised. The Agency should have the power to withdraw such authorisation in certain cases, while respecting the procedural safeguards pursuant to Articles 14(6) to (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. RRMs registered by the Agency and included in the Agency's list of RRMs should be allowed to continue operating until the Agency has taken a decision on authorisation pursuant to Article 9a of this Regulation. RRMs should have mechanisms in place allowing to effectively check transaction reports. While developing such mechanisms, RRMs may involve market participants.*

- (13) In order to facilitate monitoring to detect potential trading based on inside information ■ , the collection of inside information needs to be aligned with the current processes for trade data reporting.
- (14) Persons professionally arranging and executing transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders and potential breaches of the obligation to publish inside information. Direct electronic access providers and ■ order-book providers should be considered as persons professionally arranging transactions.
- (15) Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management foresees the possibility of third country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market coupling operator uses a specific algorithm to match bids and offers in an optimal manner, this may result in orders to trade being placed in a third country participating in the Union single day-ahead and intraday coupling but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product pursuant to this Regulation.

- (16) In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the Agency should collect all the LNG market data that are necessary to establish a daily LNG price assessment *and an LNG benchmark*. The price assessment *and the benchmark* should be undertaken based on all transactions pertaining to LNG deliveries *into* the Union. *The Agency* should be empowered to collect this market data from all participants active in LNG deliveries *into* the Union. All such participants should be obliged to report all of their LNG market data to *the Agency* as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The *Agency's* 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 this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.
- (17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and *should aim 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 approval. 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 an authority which is best placed to take action on the subject matter.
- (17a) *The rules on the performance of the duties of national regulatory authorities and the Agency should ensure that conflicts of interest are avoided as far as possible.*

- (18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. ***In order to ensure the consistent application of administrative fines across Member States for breaches of that Regulation, it should provide for a list of administrative fines and administrative measures which should be available to the national regulatory authorities as well as for a list of criteria for determining the level of those administrative fines and for levels of administrative fines. In particular, the actual amount of fines to 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 fines on a case by case basis.*** Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect the type of the breaches, taking into account the *ne bis in idem* principle. ***The adoption and publication of administrative fines should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union. Administrative measures, administrative fines and supervisory measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy market requires a consistent approach among national regulatory authorities. National regulatory authorities should be provided with the appropriate resources in order to fulfil their tasks.***
- (18a) ***Where a market participant, which 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 competent authorities to address the representative with regards to the obligations laid down in this Regulation.***
- (19) To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviours are increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.

- (20) Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of market integration. The absence of a mechanism to ensure the best possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is ■ a need to set up an efficient and effective supervisory and investigatory regime for *that* type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone.
- (21) The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases requires involvement of the Agency, in particular in *a* more integrated energy market. Since the entry into force of Regulation (EU) No 1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011, *including by appointing an independent investigating officer within the Agency. In exercising its powers the Agency should give a priority, if needed, to the cases with the biggest cross-border impact.* 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.* Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.
- (21a) *To fulfil the new obligations assigned to it, in particular those relating to enhanced investigatory powers in cross-border cases, the Agency should have adequate resources, including the necessary personnel.*

- (21b) *A main criterion for determining whether a case has a cross-border dimension relates to delivery of wholesale energy products in a certain number of Member States. However, for technical reasons, there are cases where the geographic location of delivery is not possible to identify. For instance, when delivery takes place or is assumed to take place in a bidding zone which encompasses the territory or part thereof of at least two Member States in the intra-day and day-ahead wholesale electricity markets, the precise place of delivery within that zone is not possible to identify. The same applies to delivery that is taking place or is being assumed to take place in gas balancing zones which encompass at least two Member States. To ensure that the Agency acts in genuinely cross-border cases as opposed to cases of solely 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 as delivery in one single Member State. However, the national regulatory authorities concerned should maintain their right to ask for the Agency's involvement in cases with cross-border elements pursuant to Article 13(4), point (d) as well as their right to object pursuant to Article 13(3a).*
- (22) The Agency should be empowered to carry out *any necessary investigation* by conducting on-site inspections, *taking statements, as well as* by issuing requests for information *by simple request or by decision*, to the persons under *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 other persons authorised by the Agency to conduct the inspection should be empowered to enter business premises where business records may be kept and, private premises of directors, managers and other members of staff of businesses concerned by an investigation. However, the exercise of this latter power should be subject to a reasoned decision by the Agency and the prior authorisation by a judicial authority.*

- (22a) *In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with necessary assistance, including where a person refuses to be subject to the inspection or to provide the requested information. Moreover, in the course of an inspection, the officials of and other persons authorised by the Agency to conduct the inspection should be empowered to affix seals on business premises for the period of time necessary for the inspection. Seals should normally not be affixed for more than 72 hours. In addition, the officials conducting the inspections should be empowered to ask for any information relevant to the subject matter and purpose of the inspection.*
- (22b) *The Agency should be empowered to impose periodic penalty payments to ensure compliance with the Agency's 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 issue 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 guarantees 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.*
- (22c) *At the end of each investigation the Agency should issue an investigation report including its findings and all evidence on which such findings have been based. The investigation report should be sent to the national regulatory authorities of the Member State(s) concerned, which should, in turn, without prejudice to their sole competence for determining whether a breach has taken place, take any necessary enforcement measures, including as appropriate the imposition of fines, according to national law and the provisions of this Regulation. The national regulatory authorities should do their utmost to ensure an appropriate follow up of the Agency's reports.*

- (22d) *The Agency should regularly inform the European Parliament and Council on its activities regarding cross-border investigations. To this end, the Agency should send summaries of its investigation reports to the European Parliament and Council on a regular basis. Such summaries should be sent in an aggregated and anonymised form and should be treated as confidential, also in view of the need to protect the purpose of the cross-border investigations at issue in accordance with Regulation (EC) No 1049/2001.*
- (22e) *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. For the avoidance of doubt, this is without prejudice to the competence of national courts to review decisions taken under this Regulation by the competent national authorities, such as authorisations by 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.*
- (22f) *This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, 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.*

- (22g) *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 legislation 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 have 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 legislation in the fields of financial services and energy. It is of particular importance that the Commission carries 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-Making⁴. 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.*
- (22h) *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 Council⁵.*

⁴ OJ L 123, 12.5.2016, p. 1, ELI: http://data.europa.eu/eli/agree_interinstit/2016/512/oj.

⁵ 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, ELI: <http://data.europa.eu/eli/reg/2011/182/oj>).

- (23) Since the objectives of this Regulation, *namely the provision of a harmonised framework to ensure wholesale energy market transparency and integrity*, cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. *Equally, investigations under this Regulation which present a cross-border dimension can be better achieved at Union level, as their impact expands beyond the territory of one Member State.* In accordance with the principle of proportionality, as set out in *Article 5 of the Treaty of the European Union*, this Regulation does not go beyond what is necessary to achieve *the objective set out herein.*

HAVE ADOPTED THIS REGULATION:

Article 1

Amendments to Regulation (EU) No 1227/2011

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

- (1) Article 1 is amended as follows:

- (a) **■** paragraph 2 *is replaced by the following:*

“2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of *Regulations (EU) 596/2014, (EU) No 600/2014 and (EU) No 648/2012 and 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.”;

(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.”;

(ba) *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 in accordance with this Regulation and with 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.”;

(2) Article 2 is amended as follows:

(a) *in point (1), in the second subparagraph, 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;”

(b) the third subparagraph is replaced by the following:

“ Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to *occur*, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products. Information may be deemed to be of *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 that future event.

An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in *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(s) *concerning trading with wholesale energy products;*”

(c) **█** point (2) *is amended as follows*:

“(i) in the first subparagraph, point (a) is replaced by the following:

(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 several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that ***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;

or;”

(ii) in ***the first subparagraph***, the following point (c) is added and preceded by the word ‘or’ at the end of point (b):

“(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;”**█**

(iii) ■ the following subparagraph is added:

“ 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;”

(d) *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;*”

(e) *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;”

(f) 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;”

(g) the following points are *added*:

“(16) ‘registered reporting mechanism’ or ‘RRM’ means a person *authorised* under 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* under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants;

(18) ‘algorithmic trading’ means trading, *including high-frequency trading*, in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;

- (19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the **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 market place’ **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 way that may result in a transaction**;
- (20a) ‘order book’ means **all the details of wholesale energy products executed at organised market places including matched and unmatched orders as well as system-generated orders and life cycle events**;
- (20b) ‘benchmark’ means **an index as defined in Article 3(1), point 3, of Regulation (EU) 2016/1011, 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**;
- (21) ‘LNG trading’ means bids, offers or transactions, **including but not limited to those taking place over the counter or in an organised market place**, 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;

- (22) ‘LNG market data’ means records of bids, offers or transactions for LNG trading with corresponding information;
- (23) ‘LNG market participant’ means any natural or legal person, irrespective of that person’s place of incorporation or domicile, who engages in LNG trading;
- (24) ‘LNG price assessment’ means the determination of a daily reference price for LNG trading in accordance with a methodology ■ established by *the Agency*;
- (25) ‘LNG benchmark’ means the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis;”
- (3) 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.”
- (4) 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 (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes ■ effective ■ disclosure but not necessarily *timely and public disclosure within* the meaning of paragraph 1 of this Article.”

(ba) *the following paragraph is added:*

“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.*”

(5) the following Article ■ is inserted:

“ Article 4a

Authorisation and supervision of IIPs

1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP complies with the requirements *set out in paragraphs 2 to 4* and has authorised *its* operation. The register of *IIPs* shall be publicly available and shall contain information on the services for which the IIP is *authorised*. The Agency shall regularly review the compliance of IIPs with *paragraphs 2 to 4*.

1a. IIPs registered by the Agency pursuant to 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.

2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available *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 format that facilitates the consolidation of the inside information with similar data from other sources.
3. The inside information *that is* made public by an IIP *pursuant to* paragraph 2 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 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;
 - (da) *the type of information (e.g. unavailability, forecast, actual use); and*
 - (e) ■ where applicable:
 - (i) the type of unavailability and the type of event;
 - (ii) the unit of measurement;
 - (iii) the unavailable, the available and the 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*.
4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also *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 to* quickly and effectively check inside information reports *with regard to their* completeness, identify omissions and obvious errors, and request *to receive a corrected version of such* reports.
- 4a. *Where the Agency finds that an IIP has infringed paragraphs 1 to 4, before withdrawing an authorisation pursuant to paragraph 5, the Agency shall afford the IIP the appropriate procedural guarantees, including those referred to in Article 14(6) to (8) of Regulation (EU) 2019/942.*
5. 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, expressly renounces the authorisation or has provided no services for the preceding six months;
- (b) obtained the registration by making false statements or by any other irregular means;
- (c) no longer meets the *requirements for authorisation set out in paragraphs 2 to 4*;
- (ca) *did not bring the infringement to an end*;
- (d) has seriously and systematically infringed this Regulation.

In case of such a decision, 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 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 give the IIP a reasonable time period of at least six months to ensure such orderly substitution, during which period the IIP shall ensure continuity of the services it provides. The Agency may however provide a shorter time period, if the continued operation of the IIP may jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of an 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.*

6. 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* comply with the inside information obligation referred to in paragraph 2;
 - (b) the content *and any relevant further details* of the inside information *made public pursuant to paragraphs 2 and 3* in such a *manner* as to enable the publication of information required under this Article;
 - (c) the concrete organisational requirements for the implementation of paragraph 4;
 - (ca) *the details concerning the process of withdrawing an authorisation of an IIP referred to in paragraph 5;*
 - (cb) *the procedural safeguards referred to in paragraph 4a;*
 - (cc) *the details concerning the process of orderly substitution referred to in paragraph 5;*
 - (cd) *the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an IIP;*

The delegated act shall be adopted by ... [12 months from the date of entry into force of this amending Regulation].”

■

(6) 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 the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an *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 its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.
2. A market participant that engages in algorithmic trading in a Member State shall notify *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 5 years* in relation to the *matters* referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

3. A market participant that provides direct electronic access to an organised market place shall notify the *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 5 years* in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

4. This Article is without prejudice to obligations *laid down in* Directive *2014/65/EU.* █

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

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

- (a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy;*

- (b) *update those definitions for the sole purpose of taking into account future developments on wholesale energy markets;*
- (c) *establish, 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.”*

(7) **█** 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 application by the Agency of this Regulation, and make that report publicly available. In such reports the Agency shall assess, inter alia, the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 15(2) of Regulation (EU) 2019/942.”*

(8) *the following articles are inserted:*

“ Article 7a

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

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

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, through 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 daily publication of the LNG price assessment as referred to in paragraph 1. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article *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, 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 7ca

LNG market data quality

1. *LNG market data shall include:*
 - (a) *the parties to the contract, including buy/sell indicator;*
 - (b) *the reporting party;*
 - (c) *the transaction price;*
 - (d) *the contract quantities;*
 - (e) *the value of the contract;*
 - (f) *the arrival window for the LNG cargo;*
 - (g) *the terms of delivery;*
 - (h) *the delivery points;*
 - (i) *the timestamp information on all of the following:*
 - (i) *the date and time of placing the bid or offer;*
 - (ii) *the transaction date and time;*
 - (iii) *the date and time of reporting of the bid, offer or transaction;*
 - (iv) *the receipt of LNG market data by the Agency.*
2. *LNG market participants shall provide the Agency with LNG market data in the following units and currencies:*
 - (a) *transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;*

- (b) contract quantities shall be reported in the units specified in the contracts and in MWh;*
 - (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;*
 - (d) delivery point shall indicate a valid identifier listed by the Agency such as referred to in the list of LNG facilities subject to reporting pursuant to 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 benchmarks.*

Article 7d

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.”

(9) Article 8 is amended as follows:

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

‘1. Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the 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 authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.’

(a) the following *paragraphs are* inserted:

“1a. For the purpose of reporting records of transactions in the wholesale energy market, including orders to trade, entered, concluded or executed at organised market places, 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).

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

(b) 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.”

(c) in paragraph 3, the first subparagraph is replaced by the following:

“3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Regulation (EU) 600/2014 or Regulation (EU) 648/2012 shall not be subject to double reporting obligations relating to those transactions.”

(d) paragraph 4 is amended as follows:

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

“ *“For the purposes of paragraphs 1, 1a and 1aa, information shall be provided by:”*

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

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

(ii) the following ■ subparagraph is added:

“ The information *referred to in the first subparagraph* shall be provided through registered reporting mechanisms.”

(e) 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 these facilities, and with inside information *that is* publicly disclosed *pursuant to* Article 4, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.”

(10) ■ 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* in accordance with 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 resident or established in a third country that enter into transactions which are required to be reported to the Agency in accordance with Article 8(1) of this Regulation shall:

(a) *designate a representative in a Member State in which the market participants are active in the wholesale energy markets and the market participants shall register with the national regulatory authority of that Member State. The representative must be designated by a written mandate and must be authorised to act on the market participants' behalf. The designation of a representative shall be without prejudice to legal actions which could be initiated against the market participant itself;*

(b) *mandate their designated representative for the purpose of being addressed in addition to or instead of such market participants, 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) *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) notify the name, email address, postal address and telephone number of their designated representative to the Agency and to the national regulatory authorities of the Member State where that designated representative resides or is established.”

(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. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency 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.”

(11) the following article **■** is inserted:

“ Article 9a

Authorisation and supervision of the Registered Reporting Mechanisms

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

The Agency shall authorise parties as RRM where:

- (a) the RRM is a legal person established in the Union; and
- (b) the RRM meets the requirements laid down in *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 provider 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 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 paragraphs 1 and 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 RRM which it has authorised in accordance with 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 with paragraphs 1 and 3. For this purpose, RRM 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 required under Article 8.

RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory 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 to** effectively check transaction reports **with regard to their** completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate details of the error or omission to the market participant and request **to receive a corrected version of such** reports.

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.

Where the Agency finds that a RRM has infringed paragraphs 1, 2 or 3, before withdrawing an authorisation pursuant to paragraph 4, it shall afford the RRM the appropriate procedural guarantees, including those referred to in Article 14(6) to (8) of Regulation (EU) 2019/942.

4. 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, expressly renounces the authorisation or has provided no services for the preceding 18 months;
 - (b) obtained the authorisation by making false statements or by any other irregular means;

- (c) no longer meets the *requirements for authorisation set out in paragraphs 1 and 3; or*
- (d) has seriously and systematically infringed this Regulation.

In case of such a decision, 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* ensure orderly substitution including the transfer of data to other RRM, *chosen by market participants*, and the redirection of reporting flows to other RRM. *The Agency shall set a reasonable period of at least six months to ensure such orderly substitution, during which period the RRM shall ensure continuity of the services it provides. The Agency may however provide a shorter time period, if the continued operation of the RRM may jeopardise the orderly operation of the system, having regard to the seriousness of the facts leading to the withdrawal of an 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.*

5. 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* comply with the information obligation referred to in paragraph 1; **█**
 - (b) the concrete organisational requirements for the implementation of paragraphs 2 and 3;
 - (c) *the details concerning the process of withdrawing an authorisation of an RRM referred to in paragraph 4;*

- (ca) *the procedural safeguards referred to in paragraph 3;*
- (cb) *the details concerning the process of orderly substitution referred to in paragraph 4;*
- (cc) *the detailed arrangements for informing market participants of a decision to withdraw the authorisation of an RRM.*

The delegated act shall be adopted by ... [12 months from the date of entry into force of this amending Regulation].”

(12) Article 10 is amended as follows:

(a) paragraph 1 is 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 market authorities, national competition authorities, ESMA, *EUROFISC* and other relevant authorities at Union level. Before establishing such mechanisms, *the Agency* shall consult with those authorities.”

(b) the following paragraph ■ is inserted:

“*1a* National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the *national* competent financial market authorities, 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.*”

(c) *paragraph 2 is replaced by the following:*

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

(ca) the following paragraph ■ is inserted:

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

(13) 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** applicable data protection **law.**”*

(b) paragraph 2 is replaced by the following

“2. *Within ... [12 months from the date of entry into force of this amending Regulation] the Agency shall develop a reference centre of information on Union wholesale energy market data.* Subject to Article 17, *in such a centre the Agency shall make public* parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred. *The Agency may also publish aggregated information on OMPs, IIPs, RRM*s *in compliance with* 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 according to transparent rules which it shall draw up and make publicly available.”

█

(14) Article 13 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation █, 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 authorities have the investigatory and enforcement powers necessary for the exercise of that function. 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 judicial authorities; *or*
(ca) following a recommendation by the Agency.

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

(b) the following paragraphs ■ are added:

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

3a. In sufficient time before exercising the powers referred to in paragraph 3 within the jurisdiction of a Member State where the acts that the Agency reasonably suspects to be in breach of this Regulation are carried out, the Agency shall inform the national regulatory authority and other concerned authorities of that Member State. The Agency 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 in accordance with the second sub-paragraph, letter a of this paragraph. The Agency shall not exercise its powers if an investigation has already been conducted on the same facts and concluded on the existence or the absence of a breach.

The national regulatory authority shall inform the Agency of its objection within three months. 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 request by the Agency, in an investigatory group convened in accordance with Article 16(4), point (c). The Agency shall inform the Commission about the creation of the investigatory group and, upon request of one of the concerned national regulatory authorities, the Agency may invite the Commission to participate, as an observer, in that cross-border investigatory group.

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

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

■
(c) 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 from the Agency referred to in Article 16(4)(b) *in cases having a cross-border impact*.

(d) *without prejudice to paragraph 3a, 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 (c), have a cross-border impact.*

- 4a. The Agency may exercise its powers to ensure that the obligations set out in Article 4 are met where the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least two Member States.*
- 4b. The Agency may exercise its powers to ensure that the obligations set out in Article 8 are applied where:*
- (a) a suspected breach affects the monitoring of trading activity by the Agency referred to in Article 7 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.*
5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least *two* Member States.
- 5a. In exercising its powers pursuant to paragraphs 4, 4a, 4b and 5, the Agency may give priority to the cases with the most significant cross-border impact. For this purpose, the Agency shall set up the criteria to identify the cases with the most significant cross-border impact, upon consulting and in cooperation with the national regulatory authorities.*

5b. For the purpose of establishing whether the conditions for the exercise of the Agency's powers set out in paragraphs 4, points (a) and (c), 4a, 4b and 5 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 as delivery in one single Member State. This paragraph shall be without prejudice to the possibility of a national regulatory authority concerned to make a request pursuant to paragraph 4, point (d) or to object pursuant to paragraph 3a.

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7. Upon completion of its actions taken to exercise its powers pursuant to paragraphs 4, 4a, 4b and 5 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 have been 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 State or Member States concerned accordingly and require that they take 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 from the receipt of the investigation report, the relevant regulatory authorities shall communicate to the Agency and, where necessary, to the Commission what measures they deem necessary to take.

7a. 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."

(15) 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 under ***Article 13(4), (4a), (4b) and (5)***, the Agency may conduct all necessary on-site inspections at ***the*** premises of the persons subject to the investigation ***where business records may be kept***. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement ***to the persons subject to the investigation***.
3. ***To the extent necessary for the inspection***, the officials of, and other persons authorised by, the Agency to conduct an on-site inspection ***are empowered to:***
 - (a) ***enter the premises concerned of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6;***
 - (b) ***examine the books and other records related to the 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. Except in duly justified cases, seals shall not be affixed for more than 72 hours;***
 - (e) ***ask any representative or member of staff of the persons subject to an investigation for explanations on facts or documents relating to the subject-matter and purpose of the inspection and to record the answers.***

3a. *If a reasonable suspicion exists that business records related to the subject-matter of an inspection which may be relevant to prove a breach of this Regulation, are being kept in private premises of directors, managers and other members of staff of businesses concerned by an investigation, the Agency may by decision carry out an 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 suspicion as referred to in the first sentence of this paragraph exists.*

■

5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.
6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, *indicate* the date on which it is to begin, the *periodic penalty payments provided for in Article 13db where the person concerned does not submit to the inspection in accordance with paragraph 3* as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of the Member State where the inspection is to be conducted prior to adopting such decision.
7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall *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, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall *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 judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure. *In the cases referred to in paragraph 3a, an on-site inspection may not be carried out without a prior authorisation by a 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 inspection.

For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the investigation. By way of derogation from *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 *in Article 13(4), (4a), (4b) and (5)*. In its request the Agency shall:
 - (a) refer to this Article as the legal basis for the request;
 - (b) state the purpose of the request;
 - (c) specify what information is required, and following which data format;
 - (d) set a time-limit, proportionate to the request, within which the information is to be provided;
 - (e) inform the person that the reply to the request for information shall not be incorrect or misleading.
2. For the purpose of information requests as referred to in paragraph 1, the Agency shall *also* have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the *person's obligation to respond to the request, the periodic penalty payments provided for in Article 13db 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 referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.

4. Where the officials of, as well as those 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 referred to in paragraph 3, including through the imposition of *fin*es in accordance with applicable national law.
5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.
6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the concerned Member States.

Article 13ba

Power to take statements

1. *In order to fulfil its obligations under Article 13(4), (4a), (4b) and (5), the Agency may interview and take statements from any person who consents to be 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 in the premises of an undertaking, the Agency shall inform the national regulatory authority of the Member State in whose territory the interview takes place. The officials of the national regulatory authority of that Member State may assist the officials and other accompanying persons authorised by the Agency to conduct the interview.*

Article 13c

Procedural guarantees

1. The Agency shall carry out on-site inspections, ***request information and take statements*** in full respect of the procedural guarantees of ***the persons subject to its 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 according to Article 13(7)***. ***The invitation to comment shall include a summary of the facts concerning the person in question and shall indicate an adequate time limit for submitting comments. In duly justified cases where necessary to preserve the confidentiality of the 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;***
 - (e) the right to receive a copy of the record of interview and either approve it or add observations.
2. The Agency shall seek evidence for and against the ***persons subject to its 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.

3a. *Article 14 (6) of Regulation (EU) 2019/942 shall not apply to the Agency's decisions adopted pursuant to Article 13a(6) and Article 13b(2).*

Article 13d

Mutual assistance

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

Article 13da

Investigating officer

1. *In order to fulfill its obligations under Article 13(4), (4a), (4b) and (5), the Agency may, where it considers it 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, 13ba while respecting the procedural guarantees set out in Article 13c. 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 13db

Periodic penalty payments

1. *The Agency shall, by 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 taken pursuant to Article 13a(6);*
 - (b) to supply the information requested by a decision 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 Articles 13a(6) and 13b(2).*
3. *Periodic penalty payments shall be effective and proportionate. To that effect, the amount of a periodic penalty payment shall be 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 following 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 13dc

Procedural guarantees of the addressees of 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 13db, the Agency shall give the persons subject to the proceedings the opportunity to be heard on the Agency's findings. The Agency shall base its decisions only on findings on which the persons subject to the proceedings have had the opportunity to comment.*
2. *The rights of defence of the persons subject to the proceedings shall be fully respected during the proceedings. 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 13dd

Nature, enforcement and allocation of periodic penalty payments

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

3. *Enforcement shall be governed by the applicable national procedural rules in force in 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 second sub-paragraph, 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.

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

Article 13de

Review by the Court of Justice of the European Union

The Court of Justice shall have unlimited jurisdiction to review decisions whereby the Agency has imposed a periodic penalty payment. It may annul, reduce or increase the periodic penalty payment imposed.”

(16) 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*, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay *but no later than four weeks as of the day in which the person professionally arranging transactions is 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, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay but no later than four weeks as of the day in which the person professionally executing transactions is 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.;

(ba) 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, in cooperation with national regulatory authorities, shall 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 and the national regulatory authorities' response to poor quality reporting and non-reporting of suspicious transactions as well as the national regulatory authorities' related enforcement and sanctions activity."*

(17) 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:
(a) on 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) on non-exhaustive indicators and examples of market behaviour relating to insider trading and market manipulation set out in Articles 3 and 2(2) respectively.”*

(ii) █ the fourth sub-paragraph is replaced by the following:

“ National regulatory authorities, competent financial authorities █ , the national competition authority and the national tax authority in a Member State shall establish appropriate forms of cooperation in order to ensure a timely effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.”

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

“ Before adopting a **■** decision *finding an infringement* of this Regulation, national regulatory authorities *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 on a breach of* this Regulation, *the national regulatory authority shall provide that decision to the Agency, including information on its date*, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. *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(3) 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(3).*”

(ba) 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, and inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;*”

(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 a tax fraud.”

(18) 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 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.

- 1a. 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.***

2. The national regulatory authorities shall **notify** the Agency of **any** delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest one month after informing the Agency.
3. The Agency may **issue** an opinion on **an** intended delegation agreement **notified pursuant to paragraph 2** within one month of **receipt of the notification**.
4. The Agency shall publish, by appropriate means, any delegation agreement as concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.

Article 16b

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, 9a and 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 about the implementation of the guidelines or recommendations addressed to them.*
5. *If required by that 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 a guideline or recommendation 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 the guidelines or recommendations referred to in paragraph 1.*
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.” **█**

(19) 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 legislation.”

(20) Article 18 is 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 must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

Without prejudice to any criminal sanctions and *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 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 it without delay of any subsequent amendment affecting them.

1a. 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 equivalent effect 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 to the Commission 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, without delay, any subsequent amendment law or amendment affecting them.

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

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

in respect of legal persons, maximum administrative *fines* of at least:

- i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;
- ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;

- iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.

in respect of natural persons, maximum administrative *fin*es of at least:

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

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

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

3a. 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 turnover of a legal person or the annual 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 breach against the responsible person.*

3b. *In the exercise of their powers to impose administrative fines and other administrative measures under the second subparagraph of paragraph 1, 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.*

3c. *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.”*

(20a) Article 19 is replaced by the following:

“ Article 19

International relations

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

(20b) 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 the delegated acts referred to in Article 4a(6), Article 6(1), point (c), and Article 9a(5) 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(6), Article 6(1) and Article 9a(5) 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(6), Article 6(1) or Article 9a(5) 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.”*

(20c) the following article is inserted:

“ Article 21a

Report and review

By 1 June 2027, and every five years thereafter, the Commission, in consultation with relevant stakeholders, shall assess the application of this Regulation, in particular as regards 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. The report shall be accompanied, where appropriate, by a legislative proposal.

By 1 June 2025 the Commission shall assess the effectiveness of introducing criminal penalties by Member States for intentional and serious cases of market abuse in the Union wholesale energy markets and 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, 13a, 13b, **13ba** 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 13db 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 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 Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also cover the costs of **ACER** for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b, **13ba** and Article 16 *of* Regulation (EU) No 1227/2011.”

Article 4

Entry into force *and application*

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

Articles 4a and 9a shall apply once the relevant delegated acts referred to in those Articles enter into force.

Article 15 paragraph 2 shall apply from ... [6 months from the date of the entry into force of this amending Regulation].

Articles 7a, 7b, 7c, 7ca, 7d, shall apply from ... [the day following the end of the period of application of Council Regulation (EU) 2022/2576 to be inserted]

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
