Amendments on REMIT

Eurelectric amendments

May 2023

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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WG Financial Regulation & Market Integrity

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Eurelectric Amendments on REMIT

Eurelectric fully supports the objective of REMIT regarding the integrity and transparency on the energy wholesale markets.

1. **Eurelectric considers that the current REMIT already provides a clear and robust framework to prevent market abuse and increase confidence of consumers and market participants in the market.**

   - We understand that **the ongoing energy crisis may trigger political concerns regarding the transparency & integrity of energy markets** and willingness to avoid future critical situations. In this regard, we understand the European willingness to assess the need to strengthen REMIT enforcement and to extend the current powers of ACER. This could however be a major issue for NRAs, members states and even market participants. It’s of utmost importance that ACERs new investigatory powers are limited to what is necessary and proportional to ensure a fair balance between the policy objective and the protection of fundamental rights. Beside, the European Commission does not demonstrate the urgency of such a wide revision, which objectives and scope are quite difficult to understand. There is no demonstration of a need for the well-functioning of wholesale energy markets and **European regulators have not, in this period of crisis, identified any threats to transparency or market manipulation that would justify such a reform**. Nor has the Commission demonstrated how the proposed changes will increase the trust of market participants and consumers in wholesale markets. REMIT has proven to be an efficient tool against market manipulations and hence, the energy crisis shouldn’t be use as pretext to significantly modify the actual regulation without a wise impact assessment.

   - The provisions aiming at enhancing REMIT enforcement and ACER powers represent a small part of the REMIT Review. I**t is of the utmost importance to bear in mind that this review contains a large number of amendments directly impacting the implementation of REMIT by market participants.** Indeed, this revision proposes to extend all the boundaries of this regulation (without any prior discussion or consultation on the objectives and expected results): the scope of application, the obligations and requirements, the responsibilities and prerogatives, and the infringements. **These are the most critical aspects for market participants, and our amendment proposals below focus on those issues.**

     - Indeed, no more than 10% of the amendments proposed by EC concern REMIT enforcement and ACER powers. 90% of the amendments address transparency and reporting issues. In this regard, it would be critical if these provisions that aim at improving market transparency have, at the end of the day, a negative impact on this market transparency since they bring too many uncertainties, risks or even impossibility to comply with because they just could not be implemented.

   - Indeed, more than 10 years after its entry into force, REMIT still contains definitions and notions that need to be clarified to be properly implemented. This still creates important risks for market participants and is detrimental for the transparency and integrity of the wholesale energy markets.

- **In this regard, Eurelectric would have welcomed a REMIT review bringing clarifications and leading to less risks for all market participants and for wholesale energy markets, hence contributing to enhanced market integrity and transparency of wholesale energy markets.**

For example, the REMIT review should focus on:

- **Clarify the definition of market participants** in order to address the situation of actors such as Storage System Operators (SSOs) and LNG System Operators (LSOs) ensuring timely disclosure of inside information possessed by such operators.
- **Clarify the definition of inside information** by the introduction of a notion of a **publication's thresholds** which definition process would have been defined by REMIT. Given the fact that the definition of Inside Information is interpreted differently from market participant to market participant as well as from the individual regulators, setting unified thresholds for the disclosure of inside information would eliminate already a large part of the uncertainty.
- **Clarify the legal framework of inside information publication and responsibilities of the Inside Information Platform (IIP) and the market participants**, in particular in the event of an IT failure of the platform leading to a delay in publication or an alteration by the IIP of data transmitted by the market participant.

2. REMIT is a very complex and technical piece of legislation. What is first or foremost expected by market participants is to have a robust regulation, easy to understand and to implement in order to guarantee a strict compliance. The most critical situation would be that this review undermines the implementation of REMIT and have a negative impact on wholesale market transparency and data reporting. In this respect, we have major concerns:

- **The objective, the scope and even the feasibility of the new provisions raise questions.** Some of these provisions even add confusion or are not sufficiently precise or precisely addressing the effective REMIT gaps or issues to be properly understood and implemented by market participants.

  Please find below an overview of the most concerning provisions:

  - ***Overlap between financial and energy regulation (Art 1):*** The introduction of numerous financial regulation components raises concerns about their implementation's viability and is likely to cause confusion. These financial concepts frequently cannot be applied in the physical energy world and do not consider the operational and industrial realities of the energy sector. In addition, the removal of the explicit carve-out of financial instruments may create unnecessary overlap in terms of supervision and lead to diverging case law between financial and physical regulators in relation to the same practice.

  - ***Definition of inside information (Art. 2.1)*** which brings confusion and risks being not properly understood and implemented:
    - The qualification of inside information is a cornerstone of REMIT and it is therefore of the utmost importance to reach a definition which is unambiguous and implementable by markets participants.
    - Amendments of article 2(1) introduces notions that are not defined or not transposable to the energy sectors, raise major operational issues regarding

their implementation, lead to shift responsibilities without rationale à **see amendment proposals 8 to 10.**

- ***Publication on Inside Information Platform (Art. 4.1):*** *proposed amendments are not* addressing the effective issues and could not be properly implemented:
  - Article 4.1 establishes the obligation for market participants to publish their inside information on a platform certified by ACER and Article 4a introduces provisions relating to the authorization and supervision of these platforms.
  - In principle, we are in favour of introducing provisions on this subject, but the provisions proposed in this revision raise many operational and legal questions for both the IIP and the market participants.
    - It would be for example impossible for IIP to comply with some provisions (e.g. redirection of reporting flows to other IIP).
  - These new provisions also do not provide for any possibility of derogation, nor do they take into account the operational constraints of market participants. Indeed, choosing or changing the platform requires IT developments for both the market participants and the platform. It seems important that:
    - (i) these provisions enter into force after a transitional period to be specified in the implementing act,
    - (ii) the formats and nature of the publications be defined in coordination with the market participants, notably during the development phase of the implementing acts,
    - (iii) a principle of derogation be introduced to cover situations where market participants find themselves materially unable to publish on these platforms (technical limitation of the platform, withdrawal of authorization, unavailability of the platform, etc.) (e.g. publication on the company's website as a back-up), and (iv) the REMIT Regulation should clearly define the respective responsibilities of the IIP and the market participant, in particular in the event of an IT failure of the platform leading to a delay in publication or an alteration by the IIP of data transmitted by the market participant.

- **Definition of market manipulation (Art.2)**: amendments proposed are not clear since they bring more uncertainty. The notion of “engaging in other behaviour” was deemed to cover the lifecycle of orders. It cannot be understood without this explanation. It would have been clearer to mention the steps of the lifecycle of orders: issuing, modifying and withdrawing. Please **see amendment proposals** 12

- Definition of wholesale energy products (Article 2 (4)): amendments proposed are very unclear and do not address the issue targeted by the European Commission. The intended objective was to capture market coupling allocations with third country firms, but we do not understand how this amendment could address this issue. In the meantime, it will cause legal insecurity and compliance risks since it may capture in theory all LNG cargoes that are sailing in the ocean even if it does not result in an effective LNG delivery in the Union. **Please see our amendment proposal 13**

➢ **REMIT is a sector-specific regulation that is intended to take into account the specificities of the energy markets,** in particular the fact that industrial assets are behind wholesale energy products and these assets are subject to other constraints such as those relating to safety or environment. **However, the introduction of numerous elements of financial regulation is likely to create confusion and puts into question the feasibility of their implementation**. These financial concepts are often not transposable and do not address the operational and industrial reality of the energy sector.

For example, we are particularly concerned by the following provisions:

- **New definition of "persons professionally arranging or executing transactions" (Art 2(8a)), and "organized market places" (Art 2(20)), and extension of the definition of "market participant" (Art 2(7)) and Persons Professionally Arranging Transactions (PPAT) (Art 15) :** these new definitions are rather broad and unclear, particularly as regards the actors involved and raise questions as to their scope (article 2.(7), (8a), (20)) and as to the circular reference set up by this review. Most of these amendments erase the delimitation between the different REMIT players creating unnecessary confusion, which could lead to damaging unclarity of their obligations under the Regulation. Please see our amendment 15

- **Definition of Inside Information: Article 2 (1):** the European Commission proposes to introduce provisions regarding information conveyed by a client and intermediate steps of protracted processes: it is not relevant to transpose these notions to the energy market. We can even mention that MAR Review mentioned that information on intermediate steps of protracted process may mislead investors rather than to contribute to efficient price formation and address the information asymmetry. Qualification of inside information is a cornerstone of REMIT, and therefore it is of the utmost importance to reach a definition which is unambiguous and implementable by market participants. For further details please see our **amendment proposals 8 and 9.**

- **This revision raises critical issues in terms of subsidiarity and jurisdictional framework.** While these new provisions will undoubtedly have an impact on market participants, we believe that Member States and national regulators seem to be more legitimate in conveying messages to MEPs. EURELECTRIC had the opportunity earlier this year in the EC consultation to support that the power of investigation should remain a national prerogative.

- **Finally, we are concerned by the proposal to make ACER's guidelines and recommendations de facto binding without proper stakeholder consultation**. Please see our amendment 31.

➢

  - We understand that this review sets a principle of binding ACER's guidelines and recommendations and the establishment of a compliance supervision regarding the implementation of these guidelines and recommendations.
  - **We raise the question of legality of having binding guidelines from ACER**. Indeed, in accordance with case Law of CJEU 15 July 2021 Fédération bancaire française c/ Autorité de contrôle prudentiel et de résolution (Aff. C-911-19), it is likely that ACER guidance could not be binding, and we propose to expressly indicate that the guidelines and recommendations issued by ACER are not binding. **Moreover, the legal nature, the scope of the obligations and the consequences associated**

    i) to the obligation of market participants and national regulatory authorities to make every effort to comply with these guidelines and recommendations,

    ii) to the obligation of market participants to report whether they comply with these guidelines and recommendations, and

    iii) to the principle of complying or explaining which applies to the **NRAs are not clear and are not consistent with the non-binding nature of the**

guidelines and recommendations. There could not be any compliance requirements regarding a non-binding documentation. **Finally in order to keep a constructive approach of REMIT, we propose that market participants are systematically consulted on the evolution or on the introduction of new guidelines and recommendations** in order to take into account operational impacts and experience feedbacks.

Amendment Proposals

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 1

Recital 2

Original text	Original text +**amendments**
(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 Council1, including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.	**~~(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 Council , including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.~~**

[1] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

Justification

Refer to comments on Article 2.2 in the amendment 12

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 2

Recital 3

Original text	Original text +**<u>amendments</u>**
The definition of inside information should also be adjusted to mirror Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments concerned must be taken into consideration. An intermediate step should be deemed to be inside information if it, by itself, meets the criteria laid down in this Regulation for inside information.	**~~The definition of inside information should also be adjusted to mirror Regulation (EU) 596/2014. In particular, where inside information concerns a process which occurs in stages, each stage of the process as well as the overall process could constitute inside information. An intermediate step in a protracted process may in itself constitute a set of circumstances or an event which exists or where there is a realistic prospect that they will come into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the financial instruments 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.~~**

Justification

Refer to comments on Amendment 8

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 3

Recital 10

Original text	Original text +**<u>amendments</u>**
(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 and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency. Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.	~~**(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 and products that have potential delivery in the Union. Organised market places should be required to provide the full order book data set to the Agency. Order book providers should also be designated as persons professionally arranging transactions subject to the obligation to monitor and report suspected breaches.**~~

Justification

The proposal widens the scope of REMIT not only to contracts with delivery in the EU but also to contracts which "have potential delivery in the Union". It is not clear

1) which contracts are considered here as we in Europe have coupled markets (e.g. with Norway) and

2) how this extraterritorial approach should work. For instance, contracts that are traded within Norway may be considered to "may result in a delivery in the Union" due to market coupling and would then even be subject to REMIT reporting. Clarifications are needed on how such provisions would work in practice or be enforced.

See also comments on Amendment 13

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 4

Recital 11

Original text	Original text +**amendments**
(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.	(11) Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency, **while use of own company websites by market participants should only be allowed in addition to the publication on IIPs.** To ensure trust in the IIPs they should be authorised and registered. **(11bis) Market participants should not be held responsible for temporary technical problems of duly registered and authorized IIPs. Therefore, provided that the information was transmitted to the platform timely and in line with the format requested, the market participant should be discharged from any liabilities related to the obligation to disclose inside information and the prohibition of insider trading.**

Justification

(11): as a complement or at least as an alternative to the proposal of 11bis explained here below, Eurelectric recommends that MPs are explicitly allowed to keep publishing on a backup platform, including corporate website (provided that the latter respects some predefined requirements, and provided that this is additional and does not replace publication on IIPs). Same as 11bis, this suggestion is meant to facilitate compliance and reduce implementation uncertainty in case the Inside Information Platform is out of service, namely by avoiding that a MP should constantly check that actual publication occurred and, if lack of publication is ascertained, should not use the information on the market (something which is especially burdensome considering the large amount of possible publication, often occurring close to real time).

(11bis): As MPs do not have any leverage over IIPs, the responsibility for the publication and transmission of data to ACER must lie with the IIPs themselves. MPs should be responsible and liable only for sending their data to IIPs. Therefore, MPs should be explicitly discharged from any liabilities when information has been correctly submitted to IIP for publication.

This amendment has also consequences for IIPs, please see our amendment 18.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 5

Recital 14

Original text	Original text +**<u>amendments</u>**
(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 shared order-book providers should be considered as persons professionally arranging transactions.	(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 shared order-book providers should be considered as persons professionally arranging transactions.**~~

Justification

Refer to comments on Article 2 (8a)

Text proposed by Commission | *Amendment proposal by Eurelectric*

Amendment 6

Recital 16

Original text

(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. The price assessment should be undertaken based on all transactions pertaining to LNG deliveries to the Union. ACER should be empowered to collect this market data from all participants active in LNG deliveries to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union. The daily publication of this objective price assessment, and of the spread established in comparison to other reference prices on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices.

Original text +**amendments**

(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. The price assessment should be undertaken based on all **relevant** transactions pertaining to LNG deliveries **in**to the Union. ACER should be empowered to collect this market data from all participants active in **relevant** LNG deliveries **in**to the Union. All such participants should be obliged to report all of their LNG market data to ACER as close to real time as technologically possible either after the conclusion of a transaction or the posting of a bid or offer to enter into a transaction. ~~**The ACER price assessment should comprise the most complete dataset including transaction prices and, as of 31 March 2023, bids and offer prices for LNG deliveries to the Union**~~. The daily publication of this objective price assessment, and of the spread established in comparison to other natural gas or LNG ~~**reference prices**~~ on the market in the form of an LNG benchmark, paves the way for its voluntary uptake by market participants as the **LNG** reference price in their contracts and transactions. Once established, the LNG price assessment and the LNG benchmark could also become a reference rate for derivatives contracts used for hedging the price of LNG or the difference in price between the LNG price and other gas prices. **ACER shall minimize the requested effort to Market Participants optimizing the collection process of the LNG data through the existing sources and reporting activities already in place.**

Justification

Considering the different objectives of the two reporting, ACER shall minimize the requested effort to Market Participants optimizing the collection process of the LNG data through the existing sources and reporting activities already in place.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 7

Article 1(a)2

Original text	Original text +**amendments**
2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.	2. This Regulation applies to trading in wholesale energy products. ~~**This Regulation is without prejudice to the application**~~ **Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments within the meaning of Article 4(1)(15)** of Directive (EU) 2014/65,~~,~~ **and to which Article 2 of regulation 596/2014 applies. This Regulation is without prejudice to** Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 ~~**as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.**~~ **as well as to the application of European competition law to the practices covered by this Regulation.**

Justification

The amendment to Article 1.2. proposed by EC deletes the provision mentioning that Articles 3 and 5 of the REMIT Regulation do not apply to wholesale energy products that are financial instruments subject to the MAR Regulation. The new wording proposed by EC would likely create a legislative overlap between the financial regulation and REMIT, the energy / sector specific regulation. We can indeed understand that national & energy & financial regulatory authorities (e.g. NRAs and FCAs) will be both competent for the supervision and enforcement of market abuse with regards to wholesale energy products which are financial products under MiFID II. In any case, we do not understand the scope and objective of such an amendment that would create an unclear legal situation / framework for both market participants and regulatory authorities. We do not either understand this amendment since there is currently no legal issue regarding this provision. The issue identified by regulators is the cooperation between national & energy & financial regulatory authorities (e.g. NRAs and FCAs). Indeed, if we refer to the ACER and ESMA statements, they both call for a strengthening of the cooperation between Energy and financial regulators. We support that a better cooperation framework be implemented. The amendment proposed by EC do not address this issue.

We propose to come back to an updated version of the initial wording.

Priority Amendment 8: Qualification of inside information

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 8

Article 2 (1)

Original text	Original text +**amendments**
[2] Article 2 is amended as follows:	[2] Article 2 is amended as follows:
[a] point (1) is amended as follows:	~~**[a] point (1) is amended as follows:**~~
	in the second subparagraph, point (d) is deleted
in the second subparagraph, the following point (e) is added:	~~**in the second subparagraph, the following point (e) is added:**~~
"(e) information conveyed by a client or by other persons acting on the client's behalf and relating to the client's pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products";	~~**"(e) information conveyed by a client or by other persons acting on the client's behalf and relating to the client's pending orders in wholesale energy products, which is of a precise nature, relating directly or indirectly, to one or more wholesale energy products";**~~

Justification

[a] point (1): Qualification of inside information is a cornerstone of REMIT, and therefore it is of the utmost importance to reach a definition which is unambiguous and implementable by market actors. The proposal of deleting point (d) goes hand in hand with the Commission amendment proposal at article 1(2)(b) third subparagraph ("For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s)"). Indeed the same concept was already present in such point (d). With the premise that it would require a wording adjustment to guarantee a conceptual applicability to energy markets (i.e., substituting the concept of "investor" with "energy market participant" and the concept of "investment decision" with the "decision to enter into wholesale energy products transactions"), this concept may indeed well qualify the "concept of significant impact on the price of wholesale energy products" but is an evident overlap with such point (d). Hence, for a matter of consistency of the legal text, it could be kept provided that said point (d) is deleted.

2 (1) (e): The revision proposes in article 2 (1) (e) to extend the definition of inside information to include information received from clients, which by extension would imply the obligation of publication by the recipient. The scope of this amendment needs to be clarified because it could have many implications for market participants. Indeed, it is not clear whether the information conveyed by clients will involve information conveyed by large customers to their suppliers. If so, it may shift the obligation to publish information of large customers onto their energy suppliers. It *should also be clarified whether this article applies de facto to traders, transferring to them an obligation to publish information, which is questionable since they are not the source of such information, and they do not own and do not operate the sus-mentioned assets. In any case, this obligation should not apply within an integrated group with a complete identity of interests (ref to the French case law). The notion of "clients" should therefore not include legal entities belonging to a vertically integrated group of companies sharing the same strategy and interests.* ***For this reason, we recommend deleting Article 2 (1) (e).***

Priority Amendment 9: Criterion of inside information

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 9

Article 2 (1) -third subparagraph

Original text	Original text +**amendments**
[b] the third subparagraph is replaced by the following:	[b] the third subparagraph is replaced by the following:
"In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.	**~~"In the case of a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, those future circumstances or that future event, and also the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event, may be deemed to be precise information.~~**
An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article."	**~~An intermediate step in a protracted process shall be deemed to be inside information if, by itself, it satisfies the criteria of inside information as referred to in this Article."~~**
	"**Information shall be deemed to be of a precise nature if it is the consequence of a decision made by the market participant who owns or controls the concerned facilities or business, or for whose operational matters the market participant is responsible for, relating, to 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 do so occur.**"

Justification

The revision proposes to clarify the "precise nature" criterion by referring to a protracted process, for which the intermediate steps would constitute inside information. This is highly problematic and should be given more consideration as it creates uncertainty and complexity. An information should qualify as "inside information" if "by itself, it satisfies the criteria of inside information". This provision is directly deriving from financial regulation and case law but will be difficult to transpose to the energy sector. For example, how would this provision apply to a maintenance process or incident analysis of a power plant that would involve dozens (even thousands) of intermediate steps with no impact on the availability of the asset and no consideration of the decisions that the *empowered bodies of the asset owner or operator must take to conduct and supervise these activities? The publication of all the intermediate steps in this kind of process, if feasible, would not provide any usable information for market participants, and might even mislead them by disseminating unvalidated information that are merely working hypotheses. Furthermore, if we refer to recital (58) of this MAR Review proposal, which could apply in the context of REMIT, it is mentioned that "The prohibition of insider dealing has the objective to prevent any possible exploitation of inside information and should apply as soon as that information is available. The requirement to disclose inside information aims to enable investors to take well-informed decisions. When information is disclosed at a very early stage and is of a preliminary nature, it may mislead investors, rather than contribute to efficient price formation and address the information asymmetry. In a protracted process, given the different iterations information has still to go through, the information related to intermediate steps is not sufficiently mature and hence should not be disclosed. In that case, the issuer should only disclose the information related to the event that this protracted process intends to bring about, at the moment when such information is sufficiently precise, such as when the management board has taken the relevant decision to bring about that event. In the case of non-protracted processes related to one-off events, notably when the occurrence of those events does not depend on the issuer, the disclosure should take place as soon as the issuer becomes aware of that event". We fully agree with this statement and recommend not exposing the market to too early disclosure of information which would prove ineffective, as well as be in breach of the cost-effectiveness principle that all new regulation must tend to achieve. For these reasons, we recommend deleting the two sentences regarding protracted processes.*

What would have been important to include in the definition of inside information is the notion of decision taken by the authorized bodies of the owner or operator of the asset (in reference to the following cases law, in Estonia, judgment of the Harju County Court of April 4, 2016 4-15-10109 and in Austria, Decision 06 –21(N30/2021) of March 15, 2022 relating to the company Verbund Energy4Business Gmbh; Decision 07 –21(N30/2021) of March 15, 2022 relating to the company Wien Energy Gmbh) and to clarify that an information based on a decision that meets the four criteria of inside information is an inside information (for example, the decision to shut down a power plant in order to carry out tests). For this reason, we propose an amendment to Article 2 (1).

Priority Amendment 10: Criterion of inside information

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 10

Article 2 (1) last paragraph

Original text	Original text +**<u>amendments</u>**
For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s);	~~**For the purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable investor would be likely to use as part of the basis of his or her investment decision(s);**~~

Justification

The last paragraph of Article 2 (1) introduces the idea that actors must publish treat as inside information any information that a reasonable investor could use to ground an investment decision. This amendment adds uncertainty to the already existing uncertainty regarding a very complex regulation that is already largely subject to interpretation. Moreover, the notion of investor is not defined in REMIT. In addition, this amendment could call into question the application of the fourth criterion for inside information, which is the significant impact on wholesale products prices criteria (article 2(1)). Moreover, we do not understand the necessity of introducing this amendment, as REMIT already contained the concept of reasonable market participant in article 2.1 (d). For this reason, we recommend deleting the last paragraph of Article 2 (1) or otherwise delete point (d) as proposed and explained in amendment n. 8 above.

Priority Amendment 11: Introduction of threshold

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 11

Article 2

Original text	Original text +**amendments**
	[c] Mandate is given to ACER to define - in close cooperation with National Regulatory Authorities - thresholds for the identification of events which, if made public, would be likely to significantly affect the prices of those wholesale energy products. Said threshold may be set at either national or EU level and shall encompass both electricity and gas markets.

Justification

We believe that it is important to introduce a predefined disclosure threshold (ideally at EU level) to remove case-by-case assessment uncertainty: legislators should consider that participants of energy markets daily manage huge amounts of information which may amount to become inside information (in the form of unavailability of installations) and for this reason need to rely on pre-determined thresholds in order to quickly identify inside information, and so timely and properly treat and publish it. Eurelectric is hence of the opinion that the definition of thresholds for the publication of inside information for gas and electricity, ideally at European level (at least at national level), is of paramount importance to eliminate the uncertainty which market participants face nowadays when managing inside information.

Priority Amendment 12: Definition of market manipulation

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 12

Article 2 (2), point (a)

Original text

[c] paragraph (2), point (a) is replaced by the following:

(2) market manipulation means:

(a) entering into any transaction, or issuing any order to trade or engaging in any other behaviour relating to in 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 that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or (...)

“(c) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.”;

[d] in paragraph (2), the following point (c) is added and preceded by the word ‘or’ at the end of point (b)

Original text +**amendments**

[c] paragraph (2), point (a) is replaced by the following:

(2) market manipulation means:

(a) entering into any transaction~~,~~ **or** issuing**, modifying or withdrawing** any order to trade ~~or engaging in any other behaviour relating to~~ in 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 that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or (...)

“(c) transmitting false or misleading information ~~or providing false or misleading inputs in relation to a benchmark~~ where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, ~~or engaging in any other behaviour which leads to the manipulation of the calculation of a benchmark.~~**”;**

[d] in paragraph (2), the following point (c) is added and preceded by the word ‘or’ at the end of point (b)

[e] at the end of paragraph (2) the following subparagraph is added:	[e] at the end of paragraph (2) the following subparagraph is added:
"Market manipulation may designate the conduct of a legal person, but also, in accordance with European Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.";	**"~~Market manipulation may designate the conduct of a legal person, but also, in accordance with European Union or national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.~~";**

Justification

(a): First, the objectives of the amendments of Article 2 (2) (a) and Article 2 (2) (a) (ii) are not clear since they bring uncertainty. For example, the amendment of Article 2 (2) (a) includes the notion of "any other behaviour" in the definition of market manipulation without explaining what this extension can cover. However, the term "behaviour" is very broad and unclear, which leads to a strong legal uncertainty. We can make the same comment on the notion "is likely". The REMIT Regulation is a regulation that still remains very complex to implement. It is therefore a regulation for which market participants asked for clarification, especially on the definitions. Thus, we propose to delete the references to "any other behaviour" and to "is likely". We also propose to introduce the notion of modification and withdrawal of orders in order to address the scope of actions targeted by regulators. We indeed understand that the initial objective is to cover of the life cycle of the orders.

Moreover, the last sub paragraph of article 2 (2) explicitly introduces the responsibility of natural persons with reference to European and national law. Such reference to European and national law is unclear and creates legal uncertainty for the natural person concerned. More importantly, the proposal could disrupt national rules set within the legal and judiciary national frameworks. It is important to ensure that each Member State has designated a jurisdiction with effective expertise in the energy markets field, as well as relevant means and powers that can effectively and consistently sanction REMIT breaches when necessary. However, this jurisdiction (even if NRAs) may operate in a framework wider than REMIT and have its jurisdictional competence limited to legal persons. Therefore, holding natural persons responsible should remain a national prerogative. Thus, we propose to delete this sentence.

(ii): Refer to previous statement (Art. 2.2(a) Market Manipulation)

(c): Refer to previous statement (Art. 2.2(a) Market Manipulation)

(e): Refer to previous statement (Art. 2.2(a) Market Manipulation)

Priority Amendment 13: Definition of wholesale energy products and contracts

Text proposed by Commission	*Amendment proposal by Eurelectric*
Amendment 13	
Article 2 (4)	
Original text	Original text +**<u>amendments</u>**
4) 'wholesale energy products' means the following contracts and derivatives, irrespective of where and how they are traded:	(4) 'wholesale energy products' means the following contracts and derivatives, irrespective of where and how they are traded:
a. contracts for the supply of electricity or natural gas where delivery is in the Union or contracts for the supply of electricity or natural gas which may result in delivery in the Union;	a. contracts for the supply of electricity or natural gas where delivery is in the Union **~~or contracts for the supply of electricity or natural gas which may result in delivery in the Union;~~**

Justification

This proposal would cause legal insecurity and compliance risks as it applies beyond the intended scope of Recital (15) of the new Regulation and may consequentially cause unintended substantial legal insecurity and compliance risks. The definition of wholesale energy products is the constitutive element of REMIT which open the door for the application of numerous REMIT obligations (in particular reporting, disclosure, registration requirements). The reference to a potential delivery in the Union creates legal uncertainty on the application of those REMIT obligations. These could apply without an actual delivery into the EU which appears disproportionate.

It is for example unclear on how this can work for non-EU countries / LNG delivery. For instance, trading physical power in the UK may result in the delivery in the European Union through the explicit interconnector capacity. Same for LNG cargoes, the provision could prove to always be true. There must be a boundary that can be drawn with legal certainty around what activity falls under the scope of REMIT otherwise it becomes impossible for market participants to comply and for NRAs to oversee. The existing definition has not shown itself to be problematic or cause any gaps in regulatory oversight.

We have been told that what was targeted by this amendment was the allocations between EU and non-EU firms within the market coupling frame. We are not sure to understand the scope and objective of this amendment and how it addresses the market coupling issues.

We propose to delete it.

Priority Amendment 14: Definition of wholesale energy products and contracts

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 14

Article 2 (4) and (5) [Fbis]

Original text	Original text +**amendments**
Second paragraph of article 2 (4) "Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products;"	In paragraph 4, second subparagraph is replaced by the following: Paragraph 5 is deleted. Second paragraph of article 2 (4) "Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, **~~contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products;"~~** **contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products.**
Art 2 (5) "consumption capacity' means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.	**~~Art 2 (5) "consumption capacity' means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.~~**
For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;"	**~~For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices~~**

~~**due to their being located in different relevant geographical markets;”**~~

Justification

Large retail customers should be excluded from the definition of Market participants, as these years of experience with REMIT clearly proved that they are not well equipped to cope with REMIT-related obligations. To this purpose we propose to modify the definition of wholesale energy product by deleting the reference to “contracts for the supply and distribution of electricity and natural gas to final customers with a consumption capacity greater a threshold defined in paragraph 5.

Priority Amendment 15: Definition of market participant

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 15

Article 2 (7)

Original text	Original text +**amendments**
“(7) ‘market participant’ means any person, including transmission system operators and persons professionally arranging or executing transactions when trading on their own account, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.	“(7) ‘market participant’ means any person, including transmission system operators ~~**and persons professionally arranging or executing transactions when trading on their own account,**~~ who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets. **Storage system operators and LNG system operators are market participants even if they are not entering into any transaction including the placing of orders to trade, in one or more wholesale energy markets;”**

Justification

This amendment raises legality and consistency issues.

First, persons professionally arranging transactions (e.g. brokers) are not deemed to “enter into transactions” and if it is the case (e.g. TSOs) they would fall into the current definition of market participant (person who enters into transactions). Moreover, this amendment is neither necessary to ensure the compliance of these persons with REMIT nor to set obligations such as giving access to their order books. Then, persons executing transactions when trading on own account are already captured in the definition of Market participants, so it is unclear why wording “executing transactions when trading on their own account” is needed. The definition of Market participants should also be completed in order to clarify the status of Storage System Operators and LNG System Operators and include them in the definition. The amendment proposed for the definition of Market participants combined with the amendments proposed for Persons Professionally Arranging Transactions (PPATs) and Organised Market Places (OMPs), create a circular reference between OMPs, PPATS and Market participants that would not only lead to non-sense situations but also creates confusion in the role and responsibilities between the persons subject to REMIT Regulation as explained in the other amendments.

Priority Amendment 16: Definition of person professionally arranging transactions

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 16

Article 2 (8a)

Original text	Original text +**amendments**
(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;”	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;”;

Justification

The proposed amendment creates a new category of actors “persons professionally executing transactions” (PPAETs) without specifying which actors are targeted beyond these persons who professionally execute transactions. The circular reference between OMPs, PPAETS and Market participants already mentioned leads to consider these actors as PPAET. Please refer to the explanatory statement of article 15. ***We propose to delete the reference to the person executing the transactions.***

The provision of a Direct electronic access (DEA) does not in any way constitute the arranging of a transaction. All orders or transactions that are placed into the market will remain in the name of the entity providing the DEA service and as such there is no arranging activity. It is therefore important to mention that these providers are not considered as persons professionally arranging transactions to exclude them from the definition of “Organised Market Place” and therefore from the obligations falling on PPAET of article 15.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 17

Article 2 (20)

Original text	Original text +**<u>amendments</u>**
(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.	(20) ‘organised market place’ ~~**(‘OMP’)**~~ **<u>or ‘organised market’</u>** means**<u>:</u>** ~~**an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.**~~ **<u>(a) a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract,</u>** **<u>(b) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract. These include electricity and gas exchanges, brokers, energy capacity platforms and other persons professionally arranging transactions such as energy balancing or ancillary services platforms and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council.</u>**

Justification

The objectives and scope of the definition proposed by the Commission are unclear. We may understand that the definition has been introduced to define the scope of the new obligation in article 8(2) for market places (access to order books).

However, this definition would also lead to classify as OMPs any legal entity/natural person executing a transaction. The carve out “but excluding purely bilateral trading where two natural persons enter into each trade on their own account” is not sufficient to exclude the activities of a single natural person executing a transaction on an exchange and more broadly person that is active executing transactions on an exchange will be classified as an OMP.

We propose as a best option to replace this definition by the definition already existing in the REMIT Implementing Regulation no 1348/2014 if it was not possible, to amend it.

Priority Amendment 18: Definition of information for market participants

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 18

Article 4.1

Original text	Original text +**amendments**
1. “Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. And complete, correct and timely assessment of the information by the public.”;	Art. 4.1) Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. And complete, correct and timely assessment of the information by the public. **The use of other channels (including market participants’ own websites) shall be allowed as an additional source for disclosure of inside information, provided that equal conditions on timeliness and accessibility as IIP are ensured.”** **Add (Art 4.1, third subparagraph)** **Market participants cannot be held responsible for technical problems of the IIP. If the information was transmitted to the platform in due time and there were technical problems, the market participant should therefore not be considered as having breached the obligation to disclose inside information nor the prohibition of insider trading. The market participant can’t either be held responsible for any publication error caused by the IIP.** **“No later than 18 months after the entry into force of the implementing act,** market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. And complete, correct and timely assessment of the information by the public. **The use of other channels (including market participants’ own**

websites) shall be allowed as an additional source for disclosure of inside information, provided that equal conditions on timeliness and accessibility as IIP are ensured.";

Justification

Article 4.1 establishes the obligation for market participants to publish their inside information on a platform certified by ACER. We are in favour of introducing provisions on this subject, but the provisions proposed in this revision raise many questions. First, there is no mention of a date of entry into force of these new provisions, nor of a transitional period. This point is particularly important for European companies who currently publish their inside information on a platform, which has not yet obtained its certification (case where the certification process is still in progress) and which still needs to carry out major IT upgrades to achieve the expected performance levels.

Moreover, the market participants should keep the possibility to publish on their company website in order to take into account.

(I) operational constraints. Indeed, choosing or changing the platform requires IT developments for both the market participants and the platform. The timeframe for such developments could be estimated to be up to 18 months for large European companies given the volume and nature of the information published. In this regard, the provisions relating to the withdrawal of authorization of the platforms do not address the situation of the market participants, nor do take into account the operational constraints and the time required to switch platforms. Operational constraints could also occur when both an IIP and its back-up become unavailable.

(ii) situations where IIPs could not publish the inside information of market participants notably because of the nature, format or volume of the information or if the platform is temporally not available (e.g due to technical issue). Therefore, market participants may not be able to publish all the information they consider as inside information on these platforms and would de facto find themselves in breach of the REMIT Regulation.

Priority Amendment 19: Publication of inside information

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 19

Article 4 (4)

Original text	Original text +**amendments**
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, complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article.	The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes **simultaneous**, complete and effective public disclosure ~~**but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article**~~**.**

Justification

The end of the sentence doesn't bring any additional normative element and leaves the definition of the market participants' publication obligations unchanged. Moreover, we do not see any reason why a publication on a transparency platform should not be considered as simultaneous It should therefore be deleted.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 20

Article 4a.2, 3 ,4 and 5

Original text	Original text +**amendments**
Authorisation and supervision of IIPs	
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 as possible and under a maximum display time to the market defined by mean of implementing act. The information shall be made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.	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,**~~ **as possible and under a maximum display time to the market defined by mean of implementing act and under a reasonnable commercial basis.** The information shall be made available for all purposes free of charge. The IIP shall efficiently and consistently disseminate such information in a way that ensures fast access to the inside information, on a non-discriminatory basis and in a format that facilitates the consolidation of the inside information with similar data from other sources.
3.The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:	~~**3.The inside information made public by an IIP in accordance with paragraph 2 shall include, at least, the following details depending on the type of inside information:**~~
(a) message ID and event status	~~**(a) message ID and event status**~~
(b) publication date, the time and start and stop of the event	~~**(b) publication date, the time and start and stop of the event**~~
(c) market participant name and the market participant identification	~~**(c) market participant name and the market participant identification**~~
(d) the bidding or balancing zone concern€(e) and where applicable:	~~**(d) the bidding or balancing €e concerned**~~ ~~**(e) and where applicable:**~~
(a) the type of unavailability and the type of event	~~**(a) the type of unavailability and the type of event**~~
(b) the unit of measurement	~~**(b) the unit of measurement**~~
(c)the unavailable, available and installed capacity	~~**(c) the unavailable, available and installed capacity**~~
	~~**(d) reason for the unavailability**~~

(d) reason for the unavailability

(e) the fuel type

(f) the affected asset

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

5) The Agency may withdraw the registration of an IIP where the latter:

(d) has seriously and systematically infringed this Regulation.

When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.

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

~~**(e) the fuel type**~~

~~**(f) the affected asset**~~

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

~~**5) The Agency may withdraw the registration of an IIP where the latter:**~~

~~**(d) has seriously and systematically infringed this Regulation.**~~

4(bis). Market participants cannot be held responsible for technical problems of the IIP. If the information was transmitted to the platform in due time and there were technical problems, the market participant should therefore not be considered for having breached the obligation to disclose inside information nor the prohibition of insider trading. Market participant can't neither be held responsible for any publication error caused by the IIP.

(d) When the registration has been withdrawn, the IIP concerned shall ensure orderly substitution ~~**including the transfer of data to other IIPs and the redirection of reporting flows to other IIPs.**~~

The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP. **Market participants shall be able, within 18 months after the notification by the Agency to the national competent authority, to continue to use this IIP or a company back up solution until he is able to publish on another certified IIP and this certified IIP is able to publish its inside information**

Justification

Market participants cannot be held responsible for delayed or erroneous publications caused by IIPs because they have no control over it. To avoid such situations, the IIP certification should include performance obligations, such as a maximum display time to the market, to be defined in the implementing acts.

The details of the information made public by an IIP should be provided for by an implementing act of the amended REMIT regulation (ref to article 4a.6.b / content of the inside information). Careful considerations should be given when drafting the implementing acts to market participants' publications practices and inside information natures and standards, to ensure those "details" properly cover the whole scope of existing and future inside information publications. Thus, we propose to delete this provision.

(Whole §3) The details of the information made public by an IIP should be provided for by an implementing act of the amended REMIT regulation. Careful considerations should be given when drafting the implementing acts to market participants' publications practices and inside information natures and standards, to ensure those "details" properly cover the whole scope of existing and future inside information publications. Thus, we propose to delete this provision.

It should be noted that the notion of "market operator" is not defined in REMIT(art 4.a.4).

According to the EC proposal, Market Participants shall disclose the inside information through IIPs. Such context raises significant concerns on the sharing of responsibility between MP and IIPs. However, if the new article 4a specifies the authorization and the supervision of the obligations imposed on IIPs, it does not include any provisions on the respective responsibilities of IIPs and market participants. Based on the Guidance on REMIT application issued by ACER, we propose to clarify that market participants are not responsible for technical problems of the IIP. If the information was transmitted to the platform in time and there were technical problems, the market participant should therefore not be considered having breached the obligation to disclose inside information. In addition, Market participant can't be held responsible for any publication error caused by the IIP. For this reason, we propose to introduce an article 4.a.4 bis.

The EC's proposals do not take into account the operational constraints of both market participants and IIPs in case of withdrawal of authorization and the deriving necessity for a market participant to change their IIP. A transitional period should be introduced in order to give time for IIPs to carry out the necessary IT development to answer to the Market participant's needs and same for the market participant to adapt its IT to the IT standards and structures of the IIP. Moreover, this provision also mentions requirements for IIP in case of withdrawal regarding the IIP substitution that may be materially impossible to implement.

Text proposed by Commission

Amendment proposal by Eurelectric

Amendment 21

Article 5a

Original text

Algorithmic trading

2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of its Member State and to the Agency.

The national regulatory authority of the Member State of the market participant 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, the key compliance and risk controls that it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems

3. A market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly. The national regulatory authority of the home Member State of the market participant may require the market participant to provide, on a regular or ad-hoc basis, a description of the systems and controls referred to in paragraph 1 and evidence that those have been applied.

Original text +**amendments**

2) The **national regulatory authority of the home Member State of the market participant or of the declared office for third country firms**—may require the market participant to provide, on ~~a regular~~ **or** ~~ad-hoc basis~~ **upon reasoned request,** a description of the processes and controls **in place to ensure that the requirements laid down in paragraph 1 are satisfied.** ~~**the nature of its algorithmic trading strategies, details of the trading parameters or limits to which the trading system is subject, the key compliance and risk controls that it has in place to ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems**~~.

3.~~**market participant that provides direct electronic access to an organised market place shall notify the competent authorities of its home Member State and the Agency accordingly.**~~ The national regulatory authority of the home Member State of the market **or the declared office for third country firms** participant may require the market participant to provide, ~~**on a regular or ad-hoc basis**~~ **upon reasoned request**, a description of the ~~**systems**~~ **processes** and controls referred to in paragraph 1 and evidence that those have been applied.

Justification

Whole article 5A) The new article 5.a. provides for regular or ad hoc reporting obligations of detailed information on the strategies, processes and controls of these trading and market access processes. Such a provision raises several questions and operational difficulties.

First, it could be understandable to provide information regarding processes and controls in place to prevent from erroneous behaviour resulting in creating or contributing to a disorderly market.

On the contrary, there is no reasons to provide the other information such as trading strategies or details of the trading parameters. In this regard, it should be noted, that beyond both the cases targeted by these new provisions, there do not exist any regular or ad-hoc requirements in REMIT to report this kind of information for any non-algorithmic trading activities.

Then, it should also be made clearer that the need to report on your controls should only relate to your designated national NRA (NRA of the home country of the market participant or the declared office for third country firms) and not all NRAs where an entity is active.

Third, the REMIT Regulation mentions in Recital 19 that "reporting requirements should be kept to a minimum and not generate unnecessary costs or administrative burdens for market participants" and "should avoid double reporting ». On this basis, it would be legitimate that such information is requested by the NRA only upon reasoned request.

Finally, the objective and the use / finality of these new requirements remain unclear, and it should not create inconsistency with the MiFID II.

Under these circumstances, we propose to amend the new provisions of article 5.a.

If this provision were to be maintained, it would finally be appropriate to require the NRAs to validate the functioning of the algorithms following the communication of controls in order to guarantee a level of operational comfort to market participant.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 22

Article 7a

Original text	Original text +**amendments**
1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.	1. ~~**As a matter of urgency,**~~ ACER shall produce and publish a daily LNG price assessment ~~**starting no later than 13 January 2023.**~~ For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.
2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all relevant LNG market data.	2. ~~**No later than 31 March 2023,**~~ ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all relevant LNG market data.

Justification

This no longer an emergency measure and the dates are not compliant with the publication date of this regulation

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 23

Article 7b

Original text	Original text +**amendments**
1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. By 31 March 2023, in addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.	1. The LNG price assessment shall be published daily, and by no later than 18.00 CET for the outright transaction price assessment. **~~By 31 March 2023~~, ~~i~~**<u>**I**</u>n addition to the publication of the LNG price assessment, ACER shall also, on a daily basis, publish the LNG benchmark by no later than 19:00 CET or as soon as technically possible.

Justification

The date is not compliant with the publication date of this regulation.

Text proposed by Commission | *Amendment proposal by Eurelectric*

Amendment 24

Article 7c

Original text

Provision of LNG market data to ACER

1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation (EU) No 1348/2014, in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET).

2. The Commission 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 29.

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

(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation (EU) No 1348/2014, including bids and offers; and

(b) the procedure, standard and electronic format and the technical and organisational requirements for submitting data to be used for the provision of the required LNG market data.

4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels

Original text +**amendments**

1. LNG market participants shall submit daily to ACER the LNG market data in accordance with the specifications set out in the Commission Implementing Regulation ~~(EU) No 1348/2014~~**,** in a standardised format, through a high-quality transmission protocol, and as close to real-time as technologically possible before the publication of the daily LNG price assessment (18:00 CET). **The Commission implementing Regulation will be adopted to cover also the specification for LNG market.**

2. The Commission ~~may~~ **has to** 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 29.

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

(a) the details of the information to be reported, in addition to the current details of reportable transactions and fundamental data under Implementing Regulation ~~(EU) No 1348/2014~~, including bids and offers; and

4. LNG market participants shall submit the required LNG market data to ACER free of charge and through the reporting channels established by ACER, ~~where possible~~ using already existing and available procedures.

established by ACER, where possible using already existing and available procedures.

Justification

Clarification in the text is needed since the submission of data by LNG is not falling into the definition and obligation of data reporting of article 8 on data collection. This new obligation could not be linked with existing REMIT reporting obligation. Therefore, the details of this new obligation for LNG has no reason to be introduced in the Implementing regulation (EU) 1348/2014. If the provisions regarding LNG are not deleted from REMIT, it should result in the adoption of a new implementing regulation.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 25

Article 7d

Original text	Original text +**amendments**
Business continuity	Business continuity
ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology as well as the methodology used for LNG market data reporting and the publication of its LNG price assessments and LNG benchmarks, taking into account the views of LNG market data contributors.”;	ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark methodology **after consulting with market participants** 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.”;

Justification

We believe that market participants should be consulted.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 26

Article 8.4 and 5

Original text	Original text +**amendments**
(i) point (d) is replaced by the following:	(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;	(d) an organised market place, a trade-matching system or other person professionally arranging ~~**or executing**~~ transactions;
(e) paragraph 5 is replaced by the following:	(e) paragraph 5 is replaced by the following:
"5.Market participants shall provide ACER and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities including planned or unplanned unavailability of these facilities, and with inside information publicly disclosed in accordance with Article 4, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.";	"5. Market participants shall provide ACER and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, **they own or control or for whose operational matters that market participant or undertaking is responsible,** including planned or unplanned unavailability of these facilities, and with inside information publicly disclosed in accordance with Article 4, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.";

Justification

Persons executing transactions are already involved the notion of market participants of article 8.4.a.

The relevance of the infrastructures Operators can't be underestimated once again. Even if an Infrastructures Operators is not entering into any transaction in wholesale energy markets they are the best positioned to disclose inside information for the facilities they manage in a timely, complete, simultaneous way. This also having regard to the ever increasing relevance LNG and Storage facilities have in the markets.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 27

Article 9

Original text	Original text +**amendments**
"1. Market participants entering into transactions which are required to be reported to ACER in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident. Market participants resident or established in a third country shall declare an office , in a Member State in which they are active and register with the national regulatory authority of that Member State.";	n/a

Justification

Article 9.1 provides that third country firms must now designate an office in a Member State in which they are active on the markets and register with the national regulator. This provision is new since, until now, third country companies had to register as market participants with a European regulator and could then operate on the European markets with the ACER codes thus acquired and the reporting obligations falling on them.

In this regard, it is particularly important that third country firms declare and register only one office in the EU and that they keep a free to choose the country where they would like to declare its office. Indeed, third country firms may have already few existing offices or branches in the EU before the entry to force of this regulation. It will be also important that no requirements regarding to human or financial means be set up as regard this obligation.

The wording proposed by the Commission does not require any amendment. However, if it was amended during the adoption process, it is important to safeguard the key principles hereabove recalled.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 28

Article 9a (4)

Original text	Original text +**amendments**
4.The Agency may withdraw the authorisation of an RRM where RRM: (d) has seriously and systematically infringed this Regulation. An RRM whose authorisation has been withdrawn shall ensure orderly substitution including the transfer of data to other RRMs and the redirection of reporting flows to other RRMs.	An RRM whose authorisation has been withdrawn shall ensure orderly substitution ~~including the transfer of data to other RRMs and the redirection of reporting flows to other RRMs~~**. Market participants shall be able, within 18 months after the notification by the Agency to the national competent authority, to continue to use this RRM or until he is able to report through another certified RRM and this certified RRM is able to report information of article 8.**

Justification

Amendment in compliance with the one proposed for article 4.a. Same justification (ref to amendment 21

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 29

Article 12 (2)

Original text	Original text +**<u>amendments</u>**
[b] paragraph 2 is replaced by the following "2. Subject to Article 17, ACER may decide to make publicly available 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. ACER shall not be prevented from publishing information on organised market places, IIPs, RRMs according to applicable data protection laws.	"2. Subject to Article 17, ACER may decide to make publicly available 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**. ~~ACER shall not be prevented from publishing information on organised market places, IIPs, RRMs according to applicable data protection laws~~."**;

Justification

The amendment of article 12 (2) proposed by EC would allow ACER to publish information on OMPs, IIPs, and RRM according to applicable data protection laws. In order to ensure protection of both personal and commercial data, it seems important to expressly refer to the protection of personal data and commercially sensitive information.

It should clear that it is not intended to publish information reported to ACER by OMPs and RRMs and notably post trade transparency.

In this regard, it is in practice unclear on whether the proposed publication concerns information on organizations (IIPs, RRMs and OMPs) or information that these organizations publish and/or report to ACER, such as information published on inside information platform (fundamental data which are already public) but also information on contracts and transactions reported to ACER by RRMs and held by OMPS, thus opening up the whole field of standard and non-standard contracts and transactions. However, this information includes elements that are commercially sensitive (e.g., commercial conditions or price clause of a supply contract) or contractual information that could lead to an identification of the co-contractors or the contracts. ***In the absence of clarification of the information concerned and the clarification that neither commercially sensitive information nor personal data will be published, we propose the deletion of the last sentence of article 12.2. Alternatively, we propose to amend it.***

Priority Amendment 30: Obligations of person professionally arranging transactions

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 30

Article 15

Original text	Original text +**amendments**
Any person professionally arranging or executing transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.	Any person professionally arranging ~~**or executing**~~ transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, ~~**4**~~ or ~~**5**~~ **4** shall notify ~~**the Agency and**~~ the relevant national regulatory authority without further delay.
Persons professionally arranging or executing transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:	Persons professionally arranging ~~**or executing**~~ transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to:
(a) identify breaches of Article 3, 4 or 5 ;	(a) identify breaches of Article 3, **4** or ~~**5**~~ **4**;
(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.”	(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.”

Justification

(Whole article 15) This amendment should be read in link with the new provisions of article 2(7), article 2(8a) and article 13(5).

It raises many questions.

(Whole article 15) This amendment should be read in link with the new provisions of article 2(7), article 2(8a) and article 13(5).

It raises many questions.

First, the persons executing transaction, who are Market participants, should not be included in the definition of PPATs which would imply that they fall within the scope of the obligation to establish surveillance systems and report suspicious situations to ACER and the NRAs. Indeed, such requirement would be too burdensome and possibly disproportionate for many of these actors if it was applied without any proportionality criteria.

Market participants' expectation that this turns to be an overwhelming additional requirement (far beyond any consideration done by the Commission when presenting its proposal) is driven by the awareness of the costs in terms of IT systems and human resources for covering this additional perimeter under surveillance. Indeed, the present surveillance perimeter for market participant is only covering the pure financial markets (as per MAR), while different logics (and in some cases different tools) are needed for monitoring REMIT physical market and REMIT auction markets like day-ahead markets. Not by chance, almost all surveillance systems available nowadays are focused on continuous markets, very few providers for DAM/auction markets.

All of this may be particularly expensive for all market participants, above all for small companies and for large final customers which may sometimes fall in the definition of PPAET as it is today. In view of the above, we propose to delete the reference to "persons executing transaction".

In addition, we propose to delete the reference to article 4. Indeed, the amendment proposed by EC extends the scope of the market monitoring to article 4 of REMIT. Such an extension does not seem relevant, since persons professionally arranging transactions (nor executing transactions for third party) neither have direct access to the inside information published by market participants, nor the means to control the transactions with regard to this inside information. It will therefore be difficult if not impossible for these persons to identify violations of Article 4 of market participants. Thus, we propose to delete the references to article 4.

If the reference to the persons executing transactions was maintained, it is important that a due assessment is made by an entity before submitting any notifications relating to potential might breach articles 3, 4, 5 otherwise there is a risk of a vast number of superfluous notifications purely for the purpose of safety-first compliance with this obligation. In addition, exchange or broker platform are the best place to have the full information of the market and therefore to notify breaches. Therefore, if the suspicious activity occurred on an exchange or broker platform then it should be sufficient to notify their compliance/surveillance teams.

Finally, PPAT should notify breaches to NRAs since investigations should remain a national prerogative.

Priority Amendment 31: Bindings guidelines

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 31

Article 16b

Original text

Guidelines and recommendations:

1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles 4a, 8 and 9a.

2. The Agency shall, where appropriate, conduct public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.

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

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

5. The Agency shall publish the information that a national regulatory authority does not

Original text +**amendments**

Guidelines and recommendations:

1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue **non-binding** 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 4a, 8 and 9a.**~~

2. The Agency shall, ~~**where appropriate,**~~ **systematically** conduct public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations.

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

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

comply or does not intend to comply with that guideline or recommendation. The Agency may also decide to publish the reasons provided by the national regulatory authority for not complying with that guideline or recommendation. The national regulatory authority shall receive advanced notice of such publication.

6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation

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

~~**6. If required by that guideline or recommendation, market participants shall report, in a clear and detailed way, whether they comply with that guideline or recommendation**~~

Justification

(Whole article 16b) The new article 16b introduced by the EC in its proposal extends the possibility of ACER to issue guidelines and recommendations. However, the proposal does not specify the legal nature of the documentation issued by ACER. In accordance with case Law of CJEU 15 July 2021 Fédération bancaire française c/ Autorité de contrôle prudentiel et de résolution (Aff. C-911-19) we propose to expressly indicate that the guidelines and recommendations issued by ACER are not binding.

Moreover, the legal nature, the scope of the obligations and the consequences associated

i) to the obligation of market participants and national regulatory authorities to make every effort to comply with these guidelines and recommendations,

ii) to the obligation of market participants to report whether they comply with these guidelines and recommendations, and

iiii) to the principle of complying or explaining which applies to the NRAs are not clear and are not consistent with the non-binding nature of the guidelines and recommendations. There could not be any compliance requirements regarding a non-binding documentation. Thus, we propose to delete these provisions.

Furthermore, the possibility for ACER to issue recommendations and guidelines to one or more market participants or NRA is not consistent with a common application of REMIT. Thus, we propose to delete this provision.

Finally in order to keep a constructive approach of REMIT, we propose that market participants are systematically consulted on the evolution or on the introduction of new guidelines and recommendations in order to take into account operational impacts and experience feedbacks.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 32

Article 18

Original text

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:

(e) adopt a decision imposing administrative pecuniary sanctions;

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

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

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

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

i. for breaches of Articles 3 and 5, EUR 5 000 000;

ii. for breaches of Article 4 and 15, EUR 1 000 000;

iii. for breaches of Article 8 and 9, EUR 500 000.

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

Original text +**amendments**

Best option deletion

Second option

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

ii. for breaches of Article 4 and 15, 2% of the total turnover of **the legal person concerned** in the preceding business year;

iii. for breaches of Article 8 and 9, 1% of the total turnover of **the legal person concerned** in the preceding business year.

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

i. for breaches of Articles 3 and 5, EUR 5 000 000;

ii. for breaches of Article 4 and 15, EUR 1 000 000;

iii. for breaches of Article 8 and 9, EUR 500 000.

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

3. Member States shall ensure that the national regulatory authority may disclose to

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.”

the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.”

Justification

We believe that the national frameworks for administrative and penal sanctioning are balanced systems and, thus, should not be harmonized. Hence, such harmonization would disrupt national adjusted structures in harmony with the national context.

The level and content of penalties for offences against EU-based regulation are normally left to the Member State. This is done in respect of the criminal law context, which must necessarily be in order for punishment to be perceived as fair and coherent. In this context, it is no less worrying that the proposed maximum penalties are even considerably stricter than those known from most Member Stats’ legislation.

Therefore, we propose as best option to delete this article. If not, we propose to clarify the notion of turnover and remind the legal principle of proportionality.

Text proposed by Commission	*Amendment proposal by Eurelectric*

Amendment 33

Article 4

Original text	Original text +**amendments**
This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union. This Regulation shall be binding in its entirety and directly applicable in all Member States.	This Regulation shall enter into force **~~on the 20th day following that of~~** **x months after** its publication in the Official Journal of the European Union. shall apply with effect from **~~6~~ x** months after the date on which the Commission adopts the relevant implementing acts referred to in **~~paragraphs 2 and 6 of that Article~~** **Article 4.a.6 and Article 9.a.5.**

Justification

The implementation of the proposed regulatory changes will incur the development and the implementation of new processes and compliance frameworks for all actors. It is critical that transitional periods be define for both the application of the Regulation and the application of the implementing acts.

The implementation of the proposed regulatory changes will incur the development and the implementation of new processes and compliance frameworks for all actors. It is critical that significant transitional periods up to 12-18 months be defined for both the application of the Regulation and the application of the implementing acts.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

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