

Opinion of the European Economic and Social Committee on the proposal for a Regulation of the European Parliament and of the Council amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

(COM(2023) 147 final)

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Referral	Council of the European Union, 31.3.2023 European Parliament, 29.3.2023
Legal basis	Article 194(2) and 304 of the Treaty on the Functioning of the European Union
Section responsible	Section for Transport, Energy, Infrastructure and the Information Society
Adopted in section	16.5.2023
Adopted at plenary	14.6.2023
Plenary session No	579
Outcome of vote (for/against/abstentions)	217/5/5

1. Conclusions and recommendations

1.1. As expressed in many of its previous opinions, the European Economic and Social Committee (EESC) finds it crucial to enhance conditions for better functioning of the energy markets, while at the same time addressing market manipulation and other phenomena that distort markets and cause negative impacts on businesses, households, and society as a whole.

1.2. Against this backdrop, the EESC welcomes the basic objective of the proposed Regulation to strengthen the monitoring and transparency of the wholesale energy markets. However, the EESC has also stressed that any initiatives must be preceded by a rigorous debate and impact analysis.

1.3. The EESC therefore regrets that the proposals regarding electricity market design have not gone through full consultation and impact assessment. It is of the opinion that no reform should be rushed and public consultations and impact assessments are precious tools in the law-making process.

1.4. In the description of the policy context for the proposed Regulation, the Commission stresses consumer, industry and investors' concerns over exposure to volatile short-term prices driven by high gas prices. However, a proper analysis of market power abuse and market manipulation is missing. In the future, continuous monitoring and analysis is required so that appropriate interventions and regulatory responses can be made in a timely manner on a sound basis.

1.5. The EESC highlights the importance of cooperation between authorities in detecting and addressing market manipulation and endorses increased collaboration and sharing of information between energy, competition, and financial regulatory authorities. In the same sense, the EESC welcomes the alignment of the definitions of inside information and market manipulation with financial market rules.

1.6. The EESC also highlights the importance of cooperation between national and EU-level authorities. It stresses the need to ensure an appropriate and efficient division of duties between national regulatory authorities and the European Union Agency for the Cooperation of Energy Regulators (ACER). Strengthening the powers of ACER must reflect its capacities and conditions within which it operates and, at the same time, its limits regarding national competences such as criminal liability. Strengthening ACER's competencies must not replace clearer and more harmonised rules for the market monitoring of national authorities.

1.7. While emphasising the importance of increasing the quality of data and transparency of trading, the EESC finds it important to streamline data and information processes and requirements with the aim of minimising the administrative burden. It points out that with the development of the market, new rules should not discourage new entrants. As for the new requirements regarding algorithmic trading, the proposal may contribute to an uneven playing field between market participants across the EU, as it leaves the periodicity of information obligations to be decided purely at the national level. The Committee calls for proportionality in data reporting and the application of the once-only principle. The revision should aim at creating a transparent and non-discriminatory system, while avoiding a misuse of data collected.

2. Background and gist

2.1. The objective of the proposed Regulation (hereinafter 'the proposal') is to improve the EU's protection against market manipulation in the wholesale energy market. To this end, it suggests amendments to the Regulations (EU) No 1227/2011 of the European Parliament and of the Council ⁽¹⁾ (REMIT Regulation) and (EU) 2019/942 of the European Parliament and of the Council ⁽²⁾ (ACER Regulation).

2.2. The proposal is part of the wider package of measures proposed by the Commission to reform the design of the electricity market, which aims to accelerate the increase in renewable energy, protect consumers from price spikes and manipulation, and contribute to the competitiveness of industries. Moreover, the proposal has a linkage with financial market legislation (notably with the Market Abuse Regulation) through financial instruments such as energy derivatives.

2.3. The proposal establishes obligations on both market participants and authorities. It focuses on procedures such as data collection and management, reporting, sharing and disclosure of information, as well as investigations and penalties. It also suggests changes to definitions. The main suggestions include the following:

- The definitions of market manipulation and inside information are proposed to be clarified and adjusted to align with the Market Abuse Regulation. The definition of a wholesale market product would be extended to also cover the placing of orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union.
- Data collection would be extended to cover also new balancing markets, as well as algorithm trading. The national regulatory authority would be empowered to require the market participant to provide a description regarding aspects such as its algorithmic trading strategies and compliance and risk control measures.
- Specific rules are proposed for the provision of data by LNG market participants to ACER, and the obligations of ACER to produce and publish a daily LNG price assessment and an LNG price benchmark.
- Inside information should be disclosed to ACER via Inside Information Platforms (IIPs), while the information on transactions needs to be provided through Registered Reporting Mechanisms (RRMs). Both IIPs and RRM would need to be authorised by ACER.
- National authorities and ACER would be obliged to share information on suspected breaches of wholesale market products on a regular basis. Cooperation is also called for between various national authorities: energy regulators, financial market authorities, competition authorities, and tax authorities. The same applies to ACER and European Securities and Markets Authority (ESMA) at EU level. National regulatory authorities would be competent to investigate any wholesale market products on their markets irrespective of where the market participant is resident or established.
- The role of ACER is proposed to be strengthened in the supervision and enforcement of activities under the REMIT Regulation. The objective is to ensure proper investigations of suspected breaches by market participants established outside the EU and to coordinate investigations especially in cross-border cases. ACER would also be empowered to conduct on-site inspections, assisted by national regulatory authorities.

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

⁽²⁾ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (OJ L 158, 14.6.2019, p. 22).

- The proposal also suggests harmonising penalties to be introduced at national level, including harmonised fines regarding breaches of the REMIT Regulation.

3. General comments

3.1. The EESC welcomes that its call for the review of REMIT has been heard by the European Commission. It underlines that the revision must lay down a framework to mitigate the risks of market abuse by means of improved market transparency and enhanced market data quality. The overall goal should be to mitigate the distortive effects on price-setting from possible market abuse and speculation. At the same time, attention needs to be paid to the possible effects of the market liquidity and market entry barriers for new market players. Clear market rules are necessary but they should enhance and must not hinder competition. The EESC points out that energy is not a commodity like any other: it is an essential building block of our economic and social system and thus has the characteristics of a public good and in this regard this commodity should be accessible to all.

3.2. Several Member States have introduced market transparency platforms, and European Network of Transmission System Operators for Electricity (ENTSO) operates a European platform. However, a systematic analysis and public awareness of the data available on these platforms would allow consumers and smaller market players to better understand and react to irregularities.

3.3. The EESC welcomes the basic objective of the proposal to address and protect against the manipulation of energy markets. To this end, the EESC finds it important to efficiently monitor activities on the market in a transparent way. It welcomes that the revision of REMIT completes the series of EU measures against different forms of speculation on the EU market, such as those that prevent manipulation involving non-filling of gas storage facilities. It supports the proposal to extend the definition of wholesale energy products to cover also the placing of orders to trade in third countries with potential delivery in the EU.

3.4. The EESC highlights that work and vigilance must take place at national level and encourages national authorities to cooperate as much as possible with their counterparts across Member States and with European regulators. Only then can the work be efficient.

3.5. The EESC has also stressed that any initiatives must be preceded by a rigorous debate and impact analysis^(?). Although it is aware that such a request would have lengthened the duration of the procedure, it underlines the need for better law-making. The EESC therefore regrets that the proposals regarding electricity market design have not gone through full consultation and impact assessment. It takes note of the Commission staff working document, but points out that this type of document does not undergo the same procedure as impact assessments. In this regard it stresses that new measures must comply with the principle of proportionality and market players should not be overburdened with reporting.

4. Specific comments

4.1. The EESC welcomes the development of the system for producing and publishing LNG price assessments and benchmarks.

4.2. While highlighting the importance of increasing the quality of data and transparency of trading, the EESC finds it important to streamline data and information processes and requirements with the aim of minimising the administrative burden. As for the new requirements regarding algorithmic trading, the proposal may contribute to an uneven playing field between market participants across the EU, as it leaves the periodicity of information obligations purely at the national level.

4.3. The EESC endorses increased cooperation and sharing of information between authorities working in the fields of energy, competition, and financial regulation. In the same sense, the EESC welcomes the alignment of the definitions of inside information and market manipulation with financial market rules.

4.4. The EESC also highlights the importance of cooperation between national and EU-level authorities. At the same time, it is however important to ensure an appropriate and efficient division of duties between national regulatory authorities and ACER. Expanding the control powers of ACER raises concerns over its capacity to manage all the tasks, considering the challenges it faces to manage the current broad agenda. National authorities need to be strengthened and equipped with clearer rules. ACER should focus on its role as coordinator.

(?) Opinion of the European Economic and Social Committee on Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions — Short-Term Energy Market Interventions and Long-Term Improvement to the Electricity Market Design — a course for action (COM(2022) 236 final) (OJ C 75, 28.2.2023, p. 185).

4.5. The power to carry out on-site inspections and issue decisions on REMIT infringements should continue to remain at national level, as the determination of the conditions of criminal liability is ultimately the exclusive competence of the Member States.

4.6. The EESC agrees that penalties must be effective, dissuasive, and proportionate. In this context, the Committee notes that the proposed fines for legal entities and natural persons are at a very high level.

Brussels, 14 June 2023.

The President
of the European Economic and Social Committee
Oliver RÖPKE
