Proposals to amend the Commission proposal for a Regulation to improve the Union's protection against market manipulation in the wholesale energy market (REMIT II)

Summary of the proposals to amend REMIT II

We welcome that the EU Commission has tabled its legislative proposal for a review of REMIT (Regulation on Wholesale Energy Market Integrity and Transparency – "*REMIT II*").[1] The further development of the REMIT framework is important as it has contributed towards an improvement in the integrity and transparency of wholesale energy markets in the EU. Therefore, we support in principle that REMIT II aims at strengthening and widening the REMIT regime to take account of market developments and to foster the supervision of energy wholesale markets. In this context it is key that REMIT II implements a tailor-made approach to give due consideration to the specifics of energy markets and their participants, incl. to the developing renewable energy markets. Also, REMIT II should aim to clarify and simply the rules to make the REMIT regime more efficient.

Against this background, in particular the following REMIT II proposals by the EU Commission are aligned with that approach:

- More binding and regular **cooperation, coordination and data exchange between energy and financial regulators** to make the regime more efficient (Art. 1(3) 2nd sub-para., Art. 10, new Art. 10 (1a) and (2a), Art. 12 (a) 2dn sub-para., Art. 16 (2) 4th sub-para., Art. 16 (3) point (e))
- **ACER can issue guidelines and recommendations** to harmonise the application of REMIT, which creates legal certainty and clarity (Art. 16b).
- It addresses for the first time the **regulation of essential infrastructure operators**, the so-called **Inside Information Platforms**, IIPs, (for disclosure of inside information) and so-called **Registered Reporting Mechanisms**, RRMs, (for transaction reporting) (Art. 2 (16) and (17), Art. 7a and 9a). This is helpful for market participants as they have to use these operators to comply with their obligations under REMIT
- The creation of public **post trade transparency**, which helps firms to better assess market liquidity, prices and the impact of supply/demand fundamentals (Art. 12 (2), Art. 17 (3))
- ACER will create a **public REMIT case register** helping firms to better understand the sanctioning decisions of regulators (Art. 16 (2), 3rd sub-para.)
- Recognition of the **"ne bis in idem" principle** to avoid double prosecutions and double punishments by the national authorities (Article 18)

However, there exist numerous areas for necessary improvement of REMIT II to better achieve the aims explained above and avoid unintended adverse consequences. **For this purpose, we have drafted proposals for amendments to REMIT II in the attached table.**

In the following text we summarise these proposals:[2]

- **The definitions of market participants (MPs) (Art. 2 (7)), persons professionally arranging (and executing) transactions (PPA(E)Ts) (Art. 2 (8a)) and organized marketplaces (OMPs) (Art. 2 (20))**:
  - Currently, those definition means that market participants are always PPA(E)Ts and OMPs which is obviously not workable and hence they do not work and do not fit well together and amendments are necessary to make them work.
  - Hence, MPs are only those persons execution transactions on own account
  - PPATs are only those persons who arrange transactions

[1] Articles and Recitals referred to in this paper are Articles and Recitals of REMIT II, unless specified otherwise.
[2] For a more detailed reasoning of these amendments, we refer to the attached REMIT II amendment table.

  - OMPs are only operators of trading venues and brokers (energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging)
- **REMIT-MAR (Market Abuse Regulation) alignment**: Overall, it is acknowledged that such alignment is needed. However, a more tailor-made approach, further alignments to inter alia acknowledge accepted market practices and technical improvements are necessary and this as follows:
  - **It is important that this alignment creates not a double lawyer of regulation under REMIT and financial market regulation (MiFID II and MAR)**:
    - Therefore, the provisions for **algorithmic trading** (Art. 5a), **direct electronic access** (Art. 5a) and **suspicious transaction and order reporting** (Art. 15) as well as the according definitions in Art. 2 (8a), (18) and (19) are amended **to exclude wholesale energy products from the scope of these obligations and definitions which are financial products**. This guarantees a distinct scope of applications to avoid that firms have to comply with two sets of regulations for the same activities
    - A **definition of financial instruments** pursuant to MiFID II is added for this purpose (Art. 2 (28)
  - **Numerous amendments (Recitals (2), (3) and (8); Art. 2 (1), 2nd subpara., point (e), Art. 2 (1), 3rd subpara., Art. 2 (2) (a) (i) to (iii), Art. 2 (2) (c), Art. 2 (3), point (a) (i))** of the recitals, definitions and operative REMIT provisions are made to consider specifics of the energy markets, the current REMIT terminology as well as to correct legal drafting errors
  - **Accepted Market Practices (Recital 3c, Art. 2a)**: Strengthen the concept of Accepted Market Practices like in MAR; new Art. 2a gives NRAs and ACER possibilities to define those
  - **New Annex I like in MAR to define positive and negative indicators** (Recital (3b), Art. 2 (3a)) to establish a new Annex I to REMIT II: this allows the definition of a list of positive and negative indicators for certain market abuses like under MAR
  - **Alignment between REMIT II and the ongoing MAR review**:
    - The scope of the disclosure obligation for inside information in the context of **protracted processes** should be clarified (Recital (3), Art. 2 (1), 3rd subpara., Art. 4 (1), 1st subpara.)
    - EU Commission Delegated Act for **list of relevant inside information** to create clarity and legal security, (Recital (3a), Art. 4 (1a))
- **Definition of wholesale energy products** should not scope-in a potential delivery into EU (Art. 2 (4)).
- **Contracts with final customers** are not defined anymore as wholesale energy products (Art. 2 (4), 2nd subpara.)
- **Balancing contracts** (Recital (10)) should remain included in the list of contracts reportable only upon reasoned request of ACER
- **Distribution System Operators (DSO), Storage System Operators (SSOs) and LNG System Operators (LSOs) defined as market participants** (Art. 2 (7)):
    - These are important market participants which should be subject to REMIT obligations as they hold regularly disclosable inside information and fundamental data even if they do not enter into transactions with regard to wholesale energy products
    - However, these infrastructure operators should become subject only to certain obligations, namely Art. 4 and Art. 8 (5), to avoid an overly burdensome and unnecessary regimes for them
- **For the publication of inside information ACER or EU Commission should be able to set a disclosure threshold either by an EU Commission list of relevant inside information (Art. 4 (1a)) or binding guidelines/recommendations of ACER (Art. 16b)**:
    - Such thresholds would create legal clarity and certainty and facilitate the firms' compliance with the REMIT inside information disclosure regime.

    - Also, it would avoid publishing not price relevant information and hence make the disclosure regime and in particular the IIPs more effective. **EFET has commissioned a study (link) for the German power markets, which confirms that a 100 MW threshold would be appropriate.**
    - This threshold was also confirmed through a report for the Nordic and the Baltic markets published by the Nord Pool Group. Also, the CRE produced a similar report.
- For the **publication of inside information** double disclosure channels should be avoided (Art. 4 (4))
- **Algorithmic Trading (Art. 1 (2), Art. 5a)**:
    - Several amendments to make the regime more tailor-made and proportionate
    - Furthermore, a clear delineation between the applicable REMIT II and MiFID II regime is necessary to avoid an overlap of application under both regulation with regard to financial instruments
- **Complete re-write of the LNG market data reporting and production and publication of LNG price assessment/benchmark (Recital (16), Art. 2 (21) to (26), Article 7a to 7d, Art. 8 of REMIT; Art. 7a of REMIT Implementing Regulation)**:
    - Drafting of amendments to relevant definitions in Art. 2, amendments to Art. 7a and to Art. 8 and to the REMIT Implementing Regulation to embed LNG market data reporting into the system of REMIT reporting and to de-couple the LNG price assessment/benchmark from the current Market Correction Mechanism
    - All technical reporting etc. details are to be defined by Commission Implementing Acts
- **Introduction of Single-Side-Reporting by OMPs (Art. 8 of REMIT; Art. 6 (1) of REMIT Implementing Act)**:
    - Amendments to Art 8 to ensure that organized market places (OMPs) are responsible and liable to report OMP traded transactions
    - Market participants continue to report their bilateral OTC transactions concluded outside the OMPs
    - Details to be defined by means of implementing acts
- **Declaration of Offices for 3rd country firms (Art. 9 (1))**: a deletion of the requirement for 3rd country firms to declare an office is necessary to avoid damaging the market liquidity. It can be overly burdensome to require a fully staffed and equipped EU established branch from which the trading activities are executed and controlled, instead of trading on a cross-border basis
- **Supervision and Authorisation of IIPs and RRMs (Art. 4 (1), 2nd and 3rd subpara., Art. 4a, Art. 8 (5), Art. 9a)**:
    - Amendments to guarantee orderly transition to new regime (existing IIPs and RRMs are deemed to be registered/authorized)
    - RRMs/IIPs based in 3rd countries should be able to operate if they meet the relevant requirements. This corresponds to the regulations of trade repositories under EMIR: A trade established in a 3rd country may provide its services and activities to EU customers when it is recognised by ESMA if certain conditions are met
    - The data interface for the data transfer between RRMs and market participants should be standardised. This would facilitate for market participants to change the RRMs, in particular if a RRM cease to operate or ACER withdraws the authorisation
    - Amendments to ensure sufficient time in case of withdrawal of the authorisation for market participants to set up membership with a new IIP / RRM
    - IIPs and RRMs are made solely responsible, and legally liable, for disclosing the received inside information, respectively, the transactional data to ACER
    - Market participants shall be allowed to use own back solutions if IIPs experience temporary technical problems
- **Post Trade Transparency (Art. 12 (2))**: ACER should be obligated to create aggregated, anonymized post-trade transparency for market participants based on existing reporting and guarantee the protection of personal data and commercially sensitive information

- **Complete strike-through of new ACER powers for parallel investigations**:
    - Deletion of Recital (19) to (22), Art. 13 (3) to (9) and Art. 13 (a) to (d), Art. 12, point (c) and Art. 32 of Regulation (EU) 2019/942 on REMIT fees).
    - **NRAs should remain solely competent and responsible for the supervision and enforcement of REMIT prohibitions under Article 3 (prohibition of insider trading) and 5 (prohibition of market manipulation) and of the obligation under Article 4 (obligation to publish inside information)**
    - **If at all, ACER should exercise such new supervisory and enforcement powers exclusively on IIPs and RRMs, for which ACER gets direct supervisory and enforcement powers under the new Articles 4a and 9a of the REMIT proposal**.
    - **This approach would be consistent with the role of ESMA under financial market regulations** and adopted changes to MiFIR (see for Data Service Providers under Art. 27a-27i and Art. 38a-38m of MiFIR) following the ESAs review (see pages 183-192 of the EC Proposal on ESA Review, COM(2017) 536 final of 20.9.2017). Under MiFIR ESMA has only investigatory and enforcement/sanctions powers with regard to Data Service Providers which are regulated and authorized by ESMA. However, ESMA has no investigatory and enforcement/sanction powers under MiFID/MiFIR and MAR with regard to market participants (non-financial firms like energy firms and financial firms like banks).
- The **"ne bis in idem" principle** should be applied in the context of the NRAs supervision and sanction practices (Art. 13 (1))
- **Suspicious transactions and order reporting (STOR) Regime (Recital (14), Art. 1 (2), Art. 2 (8a), Art. 15):**
    - It should be **applicable exclusively to persons professionally arranging transactions** and to **OMP transactions** only (and not to persons executing transactions and bilateral OTC transactions).
    - It should **not apply to Art. 4 (disclosure of inside information).**
    - A clear **delineation between the scope of the REMIT STOR and MAR STOR Regime** is necessary to avoid overlay of these regimes with regard to financial instruments (only MiFID II and MAR should apply to financial instruments insofar)
- The **public REMIT case register** should be in English and it is not clear why NRAs need to send their draft decisions 30 days before a final decision (Art. 16 (2))
- **Delegation btw NRAs (Recital (17), Art. 16a):** If that new provision is retained it needs to specifically set out in which matters a delegation can take place. If at all, this should be limited to technical implementation matters of data collection (but not supervision of market participants)
- **ACER Guidelines and Recommendations** (Art. 16b):
    - A clarification of the legal nature of guidelines and recommendations if necessary. **They could be binding if reviewed and adopted by EU Commission**
    - **Extension to the other relevant implementation matters** to ensure meaningful scope.
    - **Deletion of "comply-or-explain" approach**
    - ACER should be under the **obligation to publicly consult** before.
    - Also OMPs, IIPs and RRMs should be obligated to comply.
- **Harmonisation of Sanctions (Recital (18), Art. 18):**
    - It is **not appropriate to simply copy-paste the calculations methods and levels of administrative sanctions from the MAR into the REMIT II**. These maximum levels are disproportionate and do not take account of the specifics of energy markets and that energy market and their market players are fundamentally different from traditional financial markets and their market players
    - The proposed calculation method must be changed and the level of sanctions must be reduced to avoid unintended consequences for the functioning and liquidity of the energy markets. **The proposed calculation method and level of fines can ultimately cause risk**

for the security of supply and could contribute to an increase in costs of the energy supply in the EU

- The reason is that such disproportionate levels of sanctions can lead to a sharp reduction of the energy exploration, production and supply activities by market participants in the EU and even cause the exit of market participant. The reason is that market participants would not be willing or able to economically bear the risk of such high sanctions based on the high turn-over figures for their commercial activities.
- Hence, the **maximum level of administrative sanctions must be lowered**
- Also, this means that linking the sanctions to turnover seems not appropriate. **It would be more appropriate to base the calculation of sanctions on the net profits in the last business year instead of turn-over figures**
- The level of administrative sanctions should be subject to the requisite intent

- **Reports and reviews (Art. 21a):**
  - The EC should be obligated to run a review of REMIT II, in particular of the newly introduced provisions.
  - Likewise, a review of the current regular double reporting in some EU MS is necessary to eliminate that unnecessary lawyer of reporting.
- **Application Date (Art. 4 of REMIT II proposal)**: To allow for an orderly transition and implementation of REMIT II, a **24 months delay of application is proposed**. This is the time needed for EU Commission and ACER to update and/or adopt the necessary implementing acts

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2023/0076 (COD) 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	
(Text with EEA relevance)	
THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,	
Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,	
Having regard to the proposal from the European Commission,	
After transmission of the draft legislative act to the national parliaments,	
Having regard to the opinion of the European Economic and Social Committee,	
Having regard to the opinion of the Committee of the Regions,	

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Acting in accordance with the ordinary legislative procedure,	
Whereas:	
(1) Open and fair competition in the internal markets for electricity and for gases and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council establishes a comprehensive framework ('REMIT') to achieve this objective. To enhance the public's trust in functioning energy markets and to protect the Union effectively against attempts of market manipulation, Regulation (EU) No 1227/2011 should be amended to further increase insufficient transparency and monitoring capacities as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework.	
(2) Wholesale energy products, which are financal instrumentens~~Financial instruments~~, including ~~energy~~ derivatives related to electrity or natural gas, 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. This alignment between	Adoption to terminology of REMIT Overall, whilst alignment between REMIT and MAR could be positive, it would be important to ensure that the national competent authorities, supervising financial markets, and national regulatory authorities, supervising the physical/financial energy markets, can apply the relevant legislation by taking into account the specific features of the energy markets. The extension to "engaging in any other behaviour" is limited in Art. 12 (1) (a) of MAR to the market conducts under points (i) and (ii) and not applicable to the employement of fictitious device or any other form of deception or contrivance under point (iii).

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REMIT and financial market legislation should ensure that the National competent authorities, supervising financial markets, and national regulatory authorities, supervising the energy markets, can apply the relevant legislation by taking into account the specific features of the energy markets. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted in line with~~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; or (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~~.	
(3) The definition of inside information should also be adjusted in line with~~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	Adoption to terminology of REMIT Proposals to amend the wording as wholesale energy markets need a tailor-made approach (not just to mirror MAR. The introduction of this concept of protracted process needs to be followed by an amendment to the disclosure obligation under Article 4: • If this proposal aims at an alignment with MAR, the EU Commission's proposal of 7.12.2023 for a Regulation to amend MAR (link – "*MAR Review*), which the EU Commission tabled in the

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into existence or occur, on the basis of an overall assessment of the factors existing at the relevant time. However, that notion should not be interpreted as meaning that the magnitude of the effect of that set of circumstances or that event on the prices of the wholesale energy products~~financial instrument~~s 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.	context of the EU Listing Act Package (link). This concerns in particular the disclosure of inside information in the context of a protracted process. • When information is disclosed at a very early stage and is of a preliminary nature, it may mislead market participants, 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 market participants 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, for example such as when the management board has taken a final investment decision to build a power plant.
(3a) To facilitate the assessment of the moment of disclosure of the relevant information by the market participants and ensure a consistent interpretation of the requirement, the Commission should be empowered to adopt a delegated act to set out a non-exhaustive list of relevant information, and, for each information, the moment when the market participant could be reasonably expected to disclose it.	Alignment with MAR Review under EU Listing Act Package. This will create legal clarity and security for market participants. For this purpose a new Article 2 (3a) is proposed.
(3b) Annex I defines non-exhaustive list of positive and negative indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive positive and negative indicators related to false or misleading signals and to price securing. These indicators for manipulative behaviour should increase the legal clarity and security for market	This proposal is aligned with the approach under MAR, i.e., the Article 12 (3) and (5) MAR. These indicators for manipulative behaviour should increase the legal clarity and security for market participants and ensure a harmonised application of the market manipulation regime acrross the EU. This Annex I should include a list of positive indicators of market manipulation under REMIT, which could consider applicable ACER's REMIT Guidance. It should also define a list of negative indicators for market manipulation under REMIT.

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participants and ensure a harmonised application of the market manipulation regime acrross the EU.	
(3c) Without prejudice to the aim of this Regulation and its directly applicable provisions, a market participant who enters into transactions or issues orders to trade which may be deemed to constitute market manipulation may be able to establish that his reasons for entering into such transactions or issuing orders to trade were legitimate and that the transactions and orders to trade were in conformity with accepted practice on the market concerned. An accepted market practice can only be established by the national regulatory authority responsible for the market abuse supervision of the energy market concerned or by ACER.	A new Article 2a is proposed to enable the national regulatory authorities and ACER to define accepted market practices. This proposal is aligned with the approach under MAR, i.e., the Article 13 MAR. These should increase the legal clarity and security for market participants to prevent that letigimate market behaviours are deemed market abusive behaviours.
(4) This Regulation is without prejudice to Regulations (EU) 596/2014, 600/2014 and 648/2012, and Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.	
(5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant	

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information they receive with national financial and competition authorities.	
(6) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the European Agency for the Cooperation of Energy Regulators (the 'Agency' or 'ACER') should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. This should include the possibility for ACER to publish information on organised market places, IIPs, RRMs according to applicable data protection laws in the interest of improving transparency of wholesale energy markets and provided it does not distort competition on those energy markets.	
(7) Organised market places which carry out activities relating to the trading of wholesale energy products that are financial instruments under Article 4(1)(15) of Directive (EU) 2014/65 shall be duly authorized pursuant to the requirements of that Directive.	
(8) The use of trading technology has evolved significantly in the past decade and is increasingly used on the wholesale energy markets. Many market participants use algorithmic trading ~~and high frequency algorithmic~~ techniques with minimal or no human intervention. The risks arising from these practises should be addressed under Regulation (EU) No 1227/2011.	Amendment to align with the scope of new Article 5a, which deals with algorithmic trading.
(9) Compliance with the reporting obligations under Regulation (EU) No 1227/2011 and the quality of the data	

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that the Agency receives is of utmost importance to ensure effective monitoring and detection of potential breaches to achieve the objective of Regulation (EU) No 1227/2011. Inconsistencies in the quality, formatting, reliability and cost of trading data have a detrimental effect on transparency, consumer protection and market efficiency. It is essential that the information received by the Agency is accurate and complete for it to effectively carry out its tasks and functions.	
(10) To improve the Agency's market monitoring and make data collection more complete, the current reporting regime needs improvement. The data collected should be expanded to overcome gaps in the data collection and include coupled markets, ~~new balancing markets, contracts for balancing markets 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.	See comments and amendment to Article 2 (4). The term "potential delivery in the Union" causes unintended and substantial legal insecurity and compliance risks for market participants. The term "order book providers" is not defined. Balancing markets are usually subject to a procedure in which a Transmission System Operator buys and sells power or gas sources needed to manage the balance of its network. The exemption of reporting balancing contracts agreed with TSOs from regular reporting should be maintained. As far as balancing conditions are often defined by national regulation and differ from wholesale market prices, we support to keep the exemption from reporting balancing contracts agreed with TSOs and to include contracts between market participants with the aim to mirror the effects of balancing transactions to be included in the list of contracts reportable only upon reasoned request of ACER.
(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	

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information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered.	
(12) To streamline and make the reporting of data to the Agency more effective, the information should be provided through Registered Reporting Mechanisms (RRMs) and the operation of RRMs should be authorised by the Agency. The RRMs should at all times comply with the conditions for authorisation and data protection law. The Agency should also establish a register of all RRMs in the Union.	
(13) In order to facilitate monitoring to detect potential trading based on inside information and data quality of collected information, the collection of inside information needs to be aligned with the current processes for trade data reporting.	
(14) Persons professionally arranging ~~and executing~~ transactions have the obligation to report suspicious transactions in breach of the provisions on insider trading and market manipulation. To enhance the possibility of enforcement of such breaches, the persons professionally arranging transactions should also have the obligation to report suspicious orders ~~and potential breaches of the obligation to publish inside information~~. ~~Direct electronic access providers and s~~Shared ~~order book providers should be considered as persons professionally arranging transactions~~.	The Terminology of Persons professionally arranging transactions should not include the execution of transactions. See explanations under definitions of market participants and PPAET. The STOR obligation should not be extended to breaches of Article 4. This extends the scope of this obligation beyond the scope of the corresponding obligation under MAR The scope of definitions and application of REMIT cannot be exclusively defined in a recital. The provision of direct electronic access to 3rd parties (clients) does typically not represent arranging transactions. Direct electronic access (DEA) means that a member or participants (energy firm) of a trading venue (e.g., EEX) allows a legal entity to use of its trading code (access). As a result, this legal entity can pass orders on directly to a trading venue, possibly thereby making use of the infrastructure of

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	the provider or a connection system that has been made available by the provider (energy firm). But all orders and any transactions remain in the name of the entity providing the access. The term Shared order-book providers is not defined and, hence, the extension to these entities is too vague and potentially too wide.
(15) Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management foresees the possibility of third country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market coupling operator uses a specific algorithm to match bids and offers in an optimal manner, this may result in orders to trade being placed in a third country participating in the Union single day-ahead and intraday coupling but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product pursuant to this Regulation.	
(16) In order to obtain an accurate, objective and reliable assessment of the price for LNG deliveries to the Union, the Agency should collect all the relevant LNG market data that are necessary to establish a ~~daily~~ LNG price assessment and LNG benchmark. The price assessment should be undertaken based on all transactions pertaining to relevant LNG deliveries into 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~~	This EC proposal for the insertion of new Articles 7a - d needs to be given more consideration. This EC proposal would perpetuate the emergency measures taken under the Council Regulation (EU) 2022/2576 on "*Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders" (hereinafter "EU Council Regulation").* However, the emergency situation, i.e., energy crisis, justifying these measures is no longer prevalent. This "LNG price information system" (production and publication of LNG Price Assessment/LNG Benchmark) is an ACER task which is new and alien to REMIT and needs more consideration if and how

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~~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. ACER shall minimize the requested effort to LNG market participants optimizing the collection process of the LNG data through the existing sources and reporting activities already in place.	this should be continued. If at all, it should be limited to the production and publishing of LNG price assessment and a more general LNG benchmark not linked to the MCM. Data collection by ACER and transaction reporting by market participant is an existing regulatory concept of REMIT. Hence, this LNG data reporting could fit into REMIT and the REMIT Implementing Act. However, a simple copy-paste of the LNG data reporting regime under the above-mentioned EU Council Regulation is neither required nor appropriate. Before this background, we propose to amend certain definitions related to LNG data reporting/price assessment/benchmark in Article 2 and Article 7a to 7d substantially, both to create an approbriate, proportionate and REMIT like LNG reporting and LNG price system. In any case these provisions need then to be aligned with the current concept of REMIT transactions reporting and details should be defined in REMIT Implementing Act (Commission Implementing Regulation (EU) No 1348/2014).
(17) Delegation of tasks and responsibilities can be an effective instrument to reduce duplication of tasks, foster cooperation and reduce the burden imposed on market participants. Therefore a clear legal basis should be provided for such delegation. National regulatory authorities should be able to delegate a defined set of tasks and responsibilities to another national regulatory authority. The delegation should be limited to pre-defined tasks and subject to ~~Introducing~~ specific conditions and ~~limiting~~ the scope for the delegation should be limited to what is necessary ~~for the effective supervision of cross-~~	This delegation from one NRA another NRA need to be drafted more specific, i.e., limited to case where the proposed re-enforced cooperation and coordination between NRAs is not sufficient. The supervision, enforcement and sanctioning of market participants for REMIT breaches should remain with the competent NRA(s) as for these tasks the proposed re-enforced cooperation and coordination between NRAs is sufficient.

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~~border market participants or groups should be possible~~. Delegations should be governed by the principle of allocating competence to an authority which is best placed to take action on the subject matter.	
(18) A uniform and stronger framework to prevent market manipulation and other breaches of Regulation (EU) No 1227/2011 in the Member States is necessary. Penalties for breaches of that Regulation should be proportionate, effective and dissuasive and reflect the type of the breaches, taking into account the *ne bis in idem* principle and of level of the current EU Member States sanction regimes. Administrative sanctions, penalty payments and supervisory measures are complementary parts of an effective enforcement regime. A harmonised supervision of the wholesale energy market requires a consistent approach among national regulatory authorities.	The proposed level of maximum fines is not appropriate and proportionate. The definition of these should be done on the basis of the current regime in the EU Member States and not by a simple copy-paste of the current MAR regime.
(19) ~~To date, the supervision and enforcement of activities under Regulation (EU) No 1227/2011 have been the responsibility of the Member States. Market abuse behaviours are increasingly cross-border in nature, often affecting several Member States. Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the national regulatory authority that would be best placed to pursue the investigation in question.~~	The Recitals (19) to (22) and the new Article 13 (3) to (9) and the new Articles 13 (a) to (d) should be deleted. As stated in Article 13 (1) the national regulatory authorities (NRAs) should remain solely competent and responsible for the supervision and enforcement of REMIT prohibitions under Article 3 (prohibition of insider trading) and 5 (prohibition of market manipulation) and of the obligation under Article 4 (obligation to publish inside information). It is doubtful if the very wide and substantial shift of supervisory and enforcement powers from NRAs to ACER pursuant to Article 13 (3) to (7), Article 13a and 13 (b) complies with the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and if they are necessary, appropriate and proportionate to guarantee an efficient supervision under REMIT.

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	ACER should be empowered only with regard to those persons that are not under the supervision of the NRAs. Hence, ACER should exercise such new supervisory and enforcement powers exclusively on IIPs and RRMs, for which ACER gets supervisory and enforcement powers under the new Articles 4a and 9a of the REMIT proposal. This approach would be consistent with the changes to MiFIR (see Art. 27a-27i and Art. 38a-38m of MiFIR) following the ESAs review (see pages 183-192 of the EC Proposal on ESA Review, COM(2017) 536 final of 20.9.2017).
(20) ~~Market abuse cases involving multiple cross-border elements and market participants established outside the Union are also particularly challenging from an enforcement perspective. The current supervisory set-up is not appropriate for the desired level of market integration. The absence of a mechanism to ensure the best possible supervisory decisions for cross-border cases, where joint action by national regulatory authorities and the Agency currently requires complicated arrangements and where there is a patchwork of supervisory regimes must be addressed. There is therefore a need to set up an efficient and effective supervisory and investigatory regime for this type of market abuse cases, which cannot, due to its Union wide features, be addressed by Member State action alone.~~	
(21) ~~The investigation of breaches of this Regulation with a cross-border dimension should be carried out through a uniform process at Union level. Complexity of cross-border cases and the need to ensure sufficient resources for such cases requires involvement of the Agency, in particular in more integrated energy market. Since the entry into force of Regulation (EU) No~~	

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~~1227/2011, the Agency has gained significant experience in monitoring and collecting relevant data on the wholesale energy markets in the Union to ensure their integrity and transparency. Building on this experience, the Agency should be empowered to carry out investigations to fight against the breaches of the provisions of Regulation (EU) No 1227/2011. The Agency should carry out such investigations in cooperation with the national regulatory authorities with the purpose of supporting and complementing their enforcement activities. Equally, in the context of an investigation by the Agency, where necessary, relevant national regulatory authorities should cooperate amongst each other in assisting the Agency.~~	
(22) ~~The Agency should be empowered to carry out investigations by conducting on-site inspections and by issuing requests for information to the persons under investigations, in particular where the suspected breaches of Regulation (EU) No 1227/2011 have a clear cross-border dimension. In undertaking the on-site inspections and in issuing requests for information to the persons under investigations, the Agency should closely and actively cooperate with the relevant national regulatory authorities, which in turn should provide the Agency with full assistance, including where a person refuses to be subject to the inspection or to provide the requested information. It is important that the procedural guarantees and fundamental rights of the persons concerned of the persons subject to the Agency's investigations are fully respected. The confidentiality of the information submitted by the persons subject to the investigation~~	

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~~should be safeguarded exchanged in accordance with applicable Union data protection rules.~~	
(23) Since the objectives of this Regulation cannot be sufficiently achieved by the Member States, but can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary to achieve that objective,	
HAS ADOPTED THIS REGULATION:	
Article 1	
Amendments to Regulation (EU) No 1227/2011	
Regulation (EU) No 1227/2011 is amended as follows:	
[1] Article 1 is amended as follows:	
[a] Second paragraph is amended as follows:	
2. This Regulation applies to trading in wholesale energy products. [Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments.] This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards	The former delineation between REMIT and MAR of the current Art. 1 (2) sentence 2 with regard to the application of the Insider Trading and Market Abuse Prohibition has been deleted ("Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies"). However, this works only if this scope extension is fully mirrowed in MAR as well. Currently, Art. 2 (2)

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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.	(a) of MAR does only carve-out spot energy (gas and power) contracts, which are wholesale energy products, from the Art. 12 (Market Manipulation) and Art. 15 (STOR for PPAETs). Consequently, his creates a double layer of regulation, supervision and enforcement as follows: Therefore, Art. 3 and 5 REMIT, but also the new provisions of the REMIT proposal, such as on algorithmic trading and direct electronic access pursuant to the new Article 5a and the amended STOR Regime under Art. 15, would apply to wholesale energy products which are financial instruments and to which the MAR applies. Consequently, the national regulatory authorities (NRAs) and the financial market authorities (National Competent Authorities – NCAs) are both competent for the supervision and enforcement of these market abuse prohibitions and compliance with the above-mentioned new/amended REMIT obligations with regard to these financial instrument products under REMIT and MAR. In principle, it would be more approbriate and proportionate if – at least – for certain provisions a delineation of the scope of application and hence competence between the different regulatory authorities, here NRAs and NCAs, is introduced to avoid a double layer of regulation and supervision, etc. This applies in particular to the new provisions of the REMIT proposal with regard to algorithmic trading and direct electronic access pursuant to the new Article 5a and the amended STOR Regime under Art. 15.
[b] In Article 1(3) the following second subparagraph is added:	
“The Agency, national regulatory authorities, ESMA and competent financial authorities of the Member States shall in particular exchange relevant information and data on a regular, at least quarterly, basis regarding potential breaches of Regulation (EU) No 596/2014 of the European	This re-enforced cooperation between authorities is supported.

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Parliament and of the Council involving wholesale energy products covered by this Regulation.	
[2] Article 2 is amended as follows:	
[a] point (1) is amended as follows:	If this proposal aims at an alignment with MAR, the EU Commission's proposal of 7.12.2023 for a Regulation to amend MAR (link – "*MAR Review*), which the EU Commission tabled in the context of the EU Listing Act Package (link). This concerns in particular the disclosure of inside information in the context of a protracted process and the power for the Commission to adopt a delegated act in accordance with Article 20 to set out and review, a non-exhaustive list of relevant inside information (see amendments to Article 4 below).
in the second subparagraph, the following point (e) is added:	
"(e) information conveyed by a third party~~client~~ or by other persons acting on the market participants~~client's~~ behalf and relating to the market participants~~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~~"; Under Article 7 (1) (d) MAR this definition concerns only persons charged with the execution of orders. Third party and market participants seems to be proper terminology. The amended Art. 2 (1) 2nd sub-para, new point (e) ist currently drafted in a way that it is taking some but not all of the general and cumulative criteria for the definition of Insider Information into account, which could be misleading. The definition of MAR Article 7 (d), which was supposedly copied-pasted for this new sub-para (e) does include all REMIT definition components. It is important to be both accurate and consistent here, hence the last half-sentence was deleted.
[b] the third subparagraph is replaced by the following:	

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"Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to do so, and if it is specific enough to enable a conclusion to be drawn as to the possible effect of that set of circumstances or event on the prices of wholesale energy products. Information may be deemed to be of precise nature if it relates to a protracted process that is intended to bring about, or that results in, particular circumstances or a particular event, including future circumstances or future events, and also if it relates to the intermediate steps of that process which are connected with bringing about or resulting in those future circumstances or that future event.	The proposal that Inside information shall also cover events (intermediate steps) that occur in the context protracted processes is highly problematic and should be given more consideration as it creates uncertainty and complexity. A simple copy-paste from MAR is not approbriate. An information should qualify as 'inside information' if 'by itself, it satisfies the criteria of inside information' (as stated in the following paragraph). We propose the the EU Commission shall define this in more detail in an implementing act. Therefore, we agree with the following assessment of the EU Commission made in the proposal of 7.12.2023 for a Regulation to amend MAR (link – "*MAR Review*"; see page 5 and recital (58) of this proposal,), which the EU Commission tabled in the context of the EU Listing Act Package (link). This reasoning applies mutatis mutandis in the context of REMIT: "*As a consequence, issuers incur high compliance costs to understand which steps of a protracted process may constitute inside information and when a certain piece of information is mature enough to be disclosed. At the same time, the effectiveness of disclosure in reducing information asymmetries between issuers and investors is limited if information is too preliminary, incomplete and still potentially subject to fundamental changes. Too early disclosure of information could mislead investors and trigger action on his/her part that could prove to be suboptimal in hindsight (e.g., divesting the stock too soon or not divesting soon enough), thus increasing the opportunity cost for investors.*" If that extension to inside information in the context of a protracted process is introcuded in REMIT, then at least – like for the ongoing EC MAR Review - the proposal should clarify in particular that the obligation to disclose all inside information to the public does not cover the information relating to the intermediate steps of a protracted process, as this information is too preliminary and hence not mature enough for disclosure. This amendment is proposed as an amendment to Article 4. As this proposal does not amend the notion of inside information laid down in this Article, the prohibition of insider dealing continues to be triggered also by an intermediate step of a

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	protracted process that qualifies as inside 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.	
For the purpsoe of paragraph 1, the Commission shall be empowered to adopt a delegated act in accordance with Article 20 to set out and review, where necessary, a non-exhaustive list of relevant intermediate steps in a protracted process if, by itself, the information meets the criteria laid down in this Article.	As explained above, market participants needs more explanations and legal clarify and security what constitutes inside information in a protracted process. A simple-copy paste disregards the specifics of the energy markets and firms.
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~~ market participant would be likely to use as part of the basis of his or her ~~investment~~ decision(s) to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product;	The terms "investor" and "investment decision" are specific MAR terms which do not fit in the context of REMIT. This proposal needs to be tailored to the terminology of REMIT. The term "investor" is – unlike "market participant" not defined in Article 2. A "investor" becomes an "market participant" as soon as he enters into transactions relating to wholesale energy products.
[c] paragraph (2), point (a) is replaced by the following:	
(2) 'market manipulation' means:	If a full aligment with MAR is intended, then this should consider in particular: • The EU Commission's proposal of 7.12.2023 for a Regulation to amend MAR (link – "*MAR Review*), which the EU Commission tabled in the context of the EU Listing Act Package (link) if and insofar relevant for REMIT.

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	• A list of behaviours indicative our counter-indicative of market manipulation comparable to Annex I of MAR • A list of behaviours indicative of behaviours indicative of "legitimate reasons" or "established market practices" comparable to Article 13 MAR.
(a) entering into any transaction, issuing any order to trade in or engaging in any other behaviour with regard to point (i) and (ii) relating to wholesale energy products which:	The extension to "engaging in any other behaviour" is limited in Art. 12 (1) (a) of MAR to the market conducts under points (i) and (ii) and not applicable to the employement of fictitious device or any other form of deception or contrivance under point (iii). See highligthed text.
(i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, 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;	The exemption of (ii) should apply to (i) to create consistency with Art. 12 (1) (a) (i) and (ii) MAR, under which the accepted market partices applies to both market manipulation definitions also.
(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	
(iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give,	

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false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;	
or	
[d] in paragraph (2), the following point (c) is added and preceded by the word 'or' at the end of point (b):	
"(c) transmitting false ~~or misleading~~ wholesale energy market transactions, including order to trade, ~~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~~."; The wording needs to be adapted to the specifics of energy markets. In the context of benchmark made by recorded transactions and orders (as it is now LNG price assessment and LNG benchmark) the inclusion within the market manipulation framework of misleading information in relation to a benchmark could be improper. Transactions and orders that might be viewed as misleading just because they not aligned to the prevailing market conditions in a defined moment should not be considered as non-genuine transactions and orders able to manipulate the benchmark. Only intentional or gross negligent activities to manipulate the benchmark (i.e. falsely inputted) should be considered as a manipulation. Taking as an example the case of LNG price assessment / benchmark, the concept of misleading input is in our opinion in conflict with the obligation of LNG data collection to which MPs are subject to. Indeed, according to Council Regulation (EU) 2022/2576, an LNG market participant has now the obligation to upload every single transaction concluded, no matter if the transaction is aligned with the prevailing market conditions if concluded for a legitimate business purpose	
[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	

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national law, of the natural persons who participate in the decision to carry out activities for the account of the legal person concerned.”;	
[ ] in paragraph (3), point (a) (i) is replaced by the following:	
“(i) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products, 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;”;	The exemption of (ii) should apply to (i) to create consistency with Art. 12 (1) (a) (i) and (ii) MAR, under which the accepted market partices applies to both market manipulation definitions also. See highlighted text.
[ ] the following new paragraph (3a) is added:	
“(3a) For the purposes of applying paragraph 2 (a) and 3(a), Annex I defines non-exhaustive list of positive and negative indicators relating to the employment of a fictitious device or any other form of deception or contrivance, and non-exhaustive indicators related to false or misleading signals and to price securing. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 specifying the indicators laid down in Annex I, in order to clarify their elements and to take into account technical developments on wholesale energy markets. “;	These indicators for manipulative behaviour should increase the legal clarity and security for market participants and ensure a harmonised application of the market manipulation regime acrross the EU. This proposal is aligned with Article 12 (3) and (5) MAR. This Annex I should include a list of positive indicators of market manipulation under REMIT, which could consider applicable ACER’s REMIT Guidance. It should also define a list of negative indicators for market manipulation under REMIT. Such a negative indicative list should state with regard to capacity withholding that under REMIT there is no obligation to issue orders to trade that correspond in volume to the actual available generating capacities (no obligation to sell). Sales offers that, for instance, exceed the marginal costs

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	of generation can, in an Energy Only Market, represent a rational bidding practice to earn contribution margins. In a liberalised market, there is no justification for an obligation to offer capacity in the market. Such an obligation would have to be imposed in the Electricity Market Regulation but not in REMIT. Furthermore, there is no need for such an extension as competition law has the necessary tools (with regard to companies that are deemed dominant according to Art. 102 TFEU or the equivalent national law) to deal with these cases and there is established practice to this effect.
[f] in paragraph (4), point (a) is replaced by the following:	
"(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 deletion of potential deliveries in the Union is required as it applies beyond the intended scope of Recital (15) and consequentially causes 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.
[ ] in paragraph (4), 2nd subparagraph is replaced by the following:	
"Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale	An exclusion from the definition of wholesale energy products should be introduced for contracts for the supply and distribution of electricity or

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energy products, if the final customer is not a producer or supplier of power or gas;"; 	natural gas for the use of final customers. The current definition is paragraph (4) and (5) of Article 2 is complex to apply and raises concerns of legal clarity and security. Also, it triggers an unproportionate burden as, with the exception of final customers that simultaneously are gas or/and power producers/suppliers (and therefore should remain included into the REMIT perimeter), final consumers are proved of not acting through standardized conditions and are not participants of wholesale markets. As a matter of fact, even if larger energy consumers benefit from increasing transparency gained through REMIT, their information is usually not relevant/does not have a significant price effect on the wholesale markets.
[| in Article 2, paragraph (5) is deleted.	Consequential amendment to the change above
[g] paragraph (7) is replaced by the following:	
"(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, and distribution system operators, storage system operators and LNG system operators for the purpose of Article 4 and Article 8 (5);";*	We propose to keep the current definition of market participants and to extend it to DSOs, SSOs and LSOs, but not to PPAETs (persons professionally arranging or executing transactions). At first the proposed extention to persons professionally executing transactions when trading on their own account is superflous as market participants trading on own account are already captured. It is not clear why persons professionally arranging transactions should be defined as market participants when they do not enter into transactions; the EU Commission should be more specific which REMIT provision should appy to such persons (e.g., STOR). If such person enter themselves into transactions during the provision of their brokerage services, they are market participants anyway. Secondly, DSOs, SSOs and LSOs regularly possess information that could constitute inside information and fundamental data which is disclosable / reportable. However, they are not necessarily entering into transactions and, hence,

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	not per see market participants. Currently, this causes a transparency gap and put the burden of disclosure on (other) market participants. Therefore, we propose the collection of fundamental data directly from TSOs, LSOs and SSOs and the disclosure of inside information by these entities as far they are the primary owner of information. This would also avoid the risk for market participants to be qualified as secondary insider, who are often unable to assess the exact status of the respective information. However, to these infrastructure providers should become subject to exclusively the relevant disclosure obligations under Art. 4 and 8 (5), but this independent of whether they enter into transactions with regard to wholesale energy products.
[h] the following new paragraph (8a) is inserted:	
"(8a) 'person professionally arranging ~~or executing transactions~~' means a person professionally engaged in the reception and transmission of orders for, or in the ~~execution~~ arrangement of transactions in, wholesale energy products which are not financial instruments. Direct electronic access providers are not considered as persons professionally arranging transactions, when they are not providing arrangement services to third parties;";	The definition and consequential obligations, in particular under the amended Article 15, shall only apply to wholesale energy products which are not financial instruments. Otherwise, the Article 15 REMIT and the Article 16 of MAR would be both applicable and create an unnecessary double layer of regulation and supervision. This definition of PPAETs is not appropriate. It includes the execution of transactions in wholesale energy products because it covers trading on own account of market participants. This extension of the definition might fit the financial markets, but it certainly does not take into consideration the characteristics of the physical markets in accordance with REMIT. In addition, the extended definition blurs the difference between Market Participants , PPATs and OMPs in wholesale energy markets, This triggers unintended consequences and could reduce liquidity in the markets. It is more appropriate to keep the definition of PPAT (person professionally arranging transactions) in its current understanding. In detail:

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	The combined effect of the three amended definitions of Market Participants, PPAETs and OMPs, which all refer to PPAETs, is that every market participant trading on own account is also defined as OMP and PPAET (and subject to the consequential REMIT requirements). In addition, the recital (14), sentence 3 outlining that providers of DEA should be considered as PPAETs has the same consequence and this sentence should be deleted. The enlargement of the perimeter from PPAT to PPAET seems only to fit the financial markets and does not take into consideration the specific characteristics of the physical ones. Physical gas, power and LNG markets are very different from financial (commodity derivatives) markets and are characterized by the activity of many more and different entities, including small and medium sized suppliers acting at local/national level. In addition, it needs to be considered that the proposed PPAET definition includes also any energy consumers that procure energy (gas/power) to cover their own consumption and not for trading purposes. All these considered, it becomes clear that inclusion of a such range of parties into the definition and the consequential REMIT requirement to have in place a "suspicious transactions and orders reporting" will be disproportionate and will constitute a market barrier. Finally, it is obvious that market participants when trading on own account are not operators of OMPs.
[i] the following new paragraph (10a) is added:	
"(10a) 'the Agency' or 'ACER' means the European Union Agency for the Cooperation of Energy Regulators;";	
[j] the following points are inserted:	

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"(16) 'registered reporting mechanism' or 'RRM' means a person registered under this Regulation to provide the service of reporting details of transactions, including orders to trade, and fundamental data to the Agency on behalf of market participants;	
(17) 'inside information platform' or 'IIP' means a person registered under this Regulation to provide the service of operating a platform for the disclosure of inside information and for the reporting of disclosed inside information to the Agency on behalf of market participants.	
(18) 'algorithmic trading' means trading in wholesale energy products which are not financial instruments where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the order, the timing, price or quantity of the order or how to manage the order after its submission, with limited human intervention or no such intervention at all, not including any system that is only used for the purpose of routing orders to one or more organised market places or for the processing of orders involving no determination of any trading parameters or for the confirmation of orders or the post-trade processing of executed transactions;	The new Article 5a shall only apply to algorithmic trading and direct electronic access relating to wholesale energy products which are not financial instruments. Otherwise, the Article 5a REMIT and the Article 17 of MiFID II would be both applicable and create an unnecessary double layer of regulation and supervision.
(19) 'direct electronic access' means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product which is not a financial instrument directly to the organised market place,	The new Article 5a shall only apply to direct electronic access relating to wholesale energy products which are not financial instruments. Otherwise, the Article 5a REMIT and the Article 17 of MiFID II would be both applicable and create an unnecessary double layer of regulation and supervision.

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including arrangements which involve the use by a person of the infrastructure of the member, participant or client, or any connecting system provided by the member, participant, or client, to transmit the orders to trade (direct market access) and arrangements whereby such an infrastructure is not used by a person (sponsored access);	
(20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging transactions ~~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~~. Alternative: (20) 'organised market place' or 'organised market' means: (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, (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 an electricity and gas exchange, an energy broker, an energy capacity platform and any other persons professionally arranging transactions. [and trading venues as defined in Article 4 of Directive 2014/65/EU of the European Parliament and of the Council.]	As explained under the definition of market participants and PPAET (person professionally arranging or executing transaction), it is not appropriate to include market participants into the the definition of OMPs. Trading on own account is not the same as the operation an OMP, it neither entails the reception and transmission of orders nor the arrangment of transactions. The definition of OMP should be limited to persons professionally arranging transactions. Alternatively, the current definition of OMPs in the Commission Implementing Regulation (EU) No 1348/2044 (Article 2 point (4)) can be used and adopted.

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(21) 'LNG trading' means entering into any transactions, including orders to trade on an organised market place, relating to~~bids, offers or transactions for~~ the purchase or sale of LNG: (a) that specify physical delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.	Aligment with REMIT terminology. With regard to bids and offers it sholud be clarified that these are relevant only when traded at OMPs. As already recognised by the general REMIT reporting regime, it is improper to talk about orders for bilateral transactions. Moreover, reporting data about OTC pre-contract negotiations would be misleading as they do not represent tradeable products, nor are they publicly visible to other companies.
(22) 'LNG market data' means records of ~~bids, offers or~~ transactions, including orders to trade, for LNG trading, relevant for LNG price assessment and LNG benchmark, with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.	Aligment with terminology of REMIT. The data relevant for producing and publishing LNG price assessments and benchmark relates to the sale and purchase of LNG The reference to the Implementing Regulation can be maintained as this fits with the other proposed amendments to the EC proposal to embedd the LNG market data reporting into the REMIT reporting framwork.
(23) 'LNG market participant' means any natural or legal person, irrespective of that person's place of incorporation or domicile, who engages in LNG trading.	
(24) 'LNG price assessment' means the determination of a ~~daily~~ reference price for LNG trading in accordance with a methodology to be established by ACER.	The Council Regulation (EU) 2022/2576 is a temporary measure and thus may not continue in its current form after the period of emergency has end. Currently, the situation for justifying such a measure is not present anymore. It is recommended to improve the regime and to allow for more flexibility.
(25) 'LNG benchmark' means ~~a~~ a benchmark as defined in point (26) with regard to LNG trading and published by ACER~~the determination of a spread between the daily LNG price assessment and the settlement price for the TTF Gas~~	A more general definition of the term LNG benchmark is required as this based on the definition in Regulation EU 2016/1011 and limited to LNG trading, i.e., for LNG deliveries into the Union (it should not comprise financial benchmarks).

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~~Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.~~"; 	The spread between the LNG price assessment and the settlement price for TTF Gas Futures can be calculated by market participants themselves. The benchmark is specifically tailored to the needs of the Council Regulation (EU) 2022/2576, which is only a temporary measure. Whilst we argue that it would no longer be necessary after the emergency has ended, if it wise to be retained it; ~~this seems not necessary and, if at all~~ however, it should be limited to the production and publishing of LNG price assessment and a more general LNG Benchmark.
(26) 'benchmark' means any index by reference to which the amount payable under a wholesale energy product or a contract relating to a wholesale energy product, or the value of a wholesale energy product, is determined. *whereas wholesale energy products are not financial instruments*.	The term "benchmark" needs to be defined for the application of the new benchmark manipulation definition. The definition is aligned with the definition of a benchmark under Article 3 point (3) of Regulation EU 2016/1011. The manipulation of financial benchmarks are sufficiently covered under the MAR, so that REMIT should apply insofar only to wholesale energy products which are not financial instruments.
(27) 'accepted market practice' means a specific market practice that is accepted by a national regulatory authority in accordance with Article 2a;	
(28) 'financial instrument' means those instruments specified in Section C of Annex I of Directive 2014/65/EU;	This term needs to be defined as it is used in this Regulation.
[ ] The following Article 2a is inserted:	
"Art. 2a	This proposal is in line with the MAR, i.e., Article 13 MAR. The intended aligment with MAR should comprise the other elements of the market abuse regime under MAR to create legal clarifty and security for market participants.

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Accepted markt practices	
1. The prohibition in Article 5 shall not apply to the activities referred to in Article 2 (1) (a) and Article 2 (3) (a), provided that the person entering into a transaction, placing an order to trade or engaging in any other behaviour establishes that such transaction, order or behaviour have been carried out for legitimate reasons, and conform with an accepted market practice as established in accordance with this Article. 2. A national regulatory authority or the Agency may establish an accepted market practice, taking into account the following criteria: (a) whether the market practice provides for a substantial level of transparency to the market; (b) whether the market practice ensures a high degree of safeguards to the operation of market forces and the proper interplay of the forces of supply and demand; (c) whether the market practice has a positive impact on market balancing or market liquidity and efficiency; (d) whether the market practice takes into account the trading mechanism of the relevant market and enables market participants to react properly and in a timely manner to the new market situation created by that practice; (e) whether the market practice does not create risks for the	

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integrity of, directly or indirectly, related markets, whether regulated or not, in the relevant wholesale energy product within the Union; (f) the outcome of any investigation of the relevant market practice by any national regulatory authority or by another authority, in particular whether the relevant market practice infringed rules or regulations designed to prevent market abuse, or codes of conduct, irrespective of whether it concerns the relevant market or directly or indirectly related markets within the Union; and (g) the structural characteristics of the relevant market, inter alia, whether it is regulated or not, the types of wholesale energy products traded and the type of market participants. 3. Before establishing an accepted market practice in accordance with paragraph 2, the competent authority shall notify the Agency and the other national regulatory authorities of its intention to establish an accepted market practice and shall provide the details of that assessment made in accordance with the criteria laid down in paragraph 2. Such a notification shall be made at least three months before the accepted market practice is intended to take effect. 4. Within two months following receipt of the notification, the Agency shall issue an opinion to the notifying national regulatory authority assessing the compatibility of the accepted market practice with paragraph 2. The Agency shall also assess whether the establishment of the accepted market practice would not threaten the market	

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confidence in the Union's energy market. The opinion shall be published on the Agency's website. 5. Where a competent authority establishes an accepted market practice contrary to the opinion of the Agency issued in accordance with paragraph 4, it shall publish on its website within 24 hours of establishing the accepted market practice a notice setting out in full its reasons for doing so, including why the accepted market practice does not threaten market confidence. 6. Where a national regulatory authority considers that another competent authority has established an accepted market practice that does not meet the criteria set out in paragraph 2, the Agency shall assist the authorities concerned in reaching an agreement. 7. National regulatory authorities shall review regularly, and at least every two years, the accepted market practices that they have established, in particular by taking into account significant changes to the relevant market environment, such as changes to trading rules or to market infrastructures, with a view to deciding whether to maintain it, to terminate it, or to modify the conditions for its acceptance. 8. The Agency shall publish on its website a list of accepted market practices. 9. The Agency shall monitor the application of accepted market practices and shall submit an annual report to the Commission on how they are applied in the markets concerned.	

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[3] in Article 3(1) the following second subparagraph is added:	
"The use of inside information by cancelling or amending an order concerning a wholesale energy product to which the information relates, where the order was placed before the person concerned possessed the inside information, shall also be considered to be insider trading.”;	
[4] Article 4 is amended as follows:	
[ ] in paragraph 1, 1st subparagraph the following sentence is added:	
That requirement shall not apply to intermediate steps in a protracted process as referred to in Article 2 point (1), 3rd subparagraph where those steps are connected with bringing about a set of circumstances or an event. To check	The introduction of this concept of protracted process needs to be followed by an amendment to the disclosure obligation under Article 4: • The market participants should only disclose the information related to the event that a protracted process intends to bring about, at the moment when such information is sufficiently precise, e.g., such as when the management board has taken the relevant decision to bring about that event, e.g., the decision to build a power plant. • Market Participants should be under the obligation to disclose only the information relating to the event that is intended to complete a protracted process. • This proposal clarifies in particular that the obligation to disclose all inside information to the public does not cover the information relating to the intermediate steps of a protracted process, as this information is too

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	preliminary and hence not mature enough for disclosure. • When information is disclosed at a very early stage and is of a preliminary nature, it may mislead market participants, 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 market participants 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, for example such as when the management board has taken a final investment decision to build a power plant. • This amendment would ensure an alignment with MAR, i.e., the EU Commission's proposal of 7.12.2023 for a Regulation to amend MAR (link – "MAR Review), which the EU Commission tabled in the context of the EU Listing Act Package (link). This concerns in particular the disclosure of inside information in the context of a protracted process. See explanation to Art. 2 point (1), 3rd subparagraph above.
[a] in paragraph 1 the following 2nd subparagraph is added:	
"Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface~~.~~ and complete, correct and timely assessment of the information by the public. IIPs shall be solely responsible, and legally liable, for disclosing the received data and making it available to the Agency.";	It is in line with the REMIT approach that inside information are owned by market participants and that they are responsible for the disclosure of this information and that this informaiton remains inside information until this information is publicly discolosed. However, while it is market participants obligation to disclose the inside information through IIPs, they do not have any leverage over IIPs. Consequently, the responsibility and legal liability for the publication as well as the transmission of data to ACER must lie with the IIPs themselves. MPs should

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	be responsible and liable only for sending their data to IIPs. Therefore, market participants should be explicitly discharged from any liabilities when they are able to demonstrate that information has been submitted to IIP for its publication. This is in line with the statements in ACER REMIT (6th Edition) Guidance (page 47) as follows "While market participants are responsible for the disclosure of inside information, the Agency understands that they do not have influence on the operation of platforms. Therefore, the Agency believes that market participants are not responsible for temporary technical problems of such platforms fulfilling the above-mentioned minimum quality requirements. If the information was transmitted to the platform in time and there were temporary technical problems, the market participant should therefore not be considered for having breached the obligation to disclose inside information."
[a] in paragraph 1 the following 3rd subparagraph is added:	
Market participants may disclose the inside information through their own back up solutions, incl their webpage, provided that this dislosure complies with minimum details required under Article 5 (3) and that the IIP, incl. its back-up facilities, is not able to make public the inside information as required under Article 5 (2).	Market participants are not responsible for temporary technical problems of IIPs to disclose the inside information sent by them to the IIPs. If the IIP expierences technical problems, incl. their "back-up facilities in place in order to offer and maintain its services at all times" under Article 5a (4), their information remains inside information. This would prevent market participants to hedge their resulting commercial (price) risks on wholesale energy markets. For example, they could not enter into transactions to hedge their short position resulting from a power plant outage. It is not approbriate and proportionate for market participants to expierence economic hardships in such a case. Therefore, market participants must be allowed to disclouse their inside informaiton through their own web page in such cases. This is in line with the statements in ACER REMIT (6th Edition) Guidance (page 47)

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[ ] the following paragraph 1a is added	
1a. The Commission shall be empowered to adopt a delegated act in accordance with Article 20 to set out and review, where necessary, a non-exhaustive list of relevant information and, for each information, the moment when the market participant can be reasonably expected to disclose it if, by itself, the information meets the criteria laid down in this Regulation for inside information.	The proposal should enhance legal clarity as to which information falls under the scope of the disclosure obligation as well as to the timing of disclosure. To facilitate the assessment of the moment of disclosure of the relevant information by the issuer and ensure a consistent interpretation of the requirement, the Commission should be empowered to adopt a delegated act to set out a non-exhaustive list of relevant information, and, for each information, the moment when the issuer could be reasonably expected to disclose it. This list of relevant inside information would enable the Commission – inter alia – to set a threshold for disclosure of inside information. Such a threshold would create legal clarity and certainty and facilitate the firms' compliance with the REMIT inside information disclosure regime. Also, it would avoid publishing not price relevant information and hence make the disclosure regime and in particular the IIPs more effective. EFET has commissioned a study for the German power markets, which confirms that a 100 MW threshold would be appropriate. This threshold was also confirmed through a report for the Nordic and the Baltic markets published by the Nord Pool Group. Also, the CRE produced a similar report. Such confirmed power and gas thresholds should be applicable in all situations except for extraordinary market situations such as national authorities' declaration of supply emergency, risk of black outs or rationing announced by TSOs.
[b] paragraph 4 is replaced by the following:	

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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~~. Market participants and TSO disclosing inside information through the channels estabilshed by Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations should be required to perform it timely in consistency with the first paragraph.	The reason for this change has not been explain and it is not clear enough why this is necessary. It might mean that also the persons obligated under those regulations to dislcose information should comply with the REMIT requirement of a timely disclosure to discharge their REMIT disclosure obligation at the same time and hence could potentially increase transparency. However, it could mean also that 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, does not comply anymore with the disclosure requirement under Article 4 (1), because it is not deemed to be timely under REMIT anmore. This contradicts the political agreement under REMIT to avoid to set up double channels and additional compliance burdens for market particiapnts where this is not necessary. This should could potentially lead to the set up of double reporting channels and, hence, increase the burdens on market participants. Therefore, the clarification is necessary.
[5] The following Article 4a is inserted:	
“Article 4a	The orderly supervision of IIPs is crucial as these entities are essential infrastructure operators and service providers for market participant’s compliance with REMIT obligations, here the disclosure of inside information. It corresponds also to similar approach in MIFiD/R, i.e., it is aligned with ESMA’s supervisory powers over trade repositories, approved reporting mechanisms and other data reporting services
Authorisation and supervision of IIPs	
1. IIPs shall register with the Agency. An IIP shall only operate after the Agency has assessed whether that IIP	This new registration requirement shall not trigger any disruption of the compliance of market participants with the disclosure obligation.

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complies with the requirements of this Article and has authorised the operation. The register of IPPs shall be publicly available and shall contain information on the services for which the IIP is registered. The Agency shall regularly review the compliance of IIPs with this Regulation. Where the Agency has withdrawn a registration in accordance with paragraph 5, that withdrawal shall be published in the register for a period of five years from the date of withdrawal. The IIPs that are already included into ACER's list at the moment of entry into force of this Regulation shall be considered as already registered, unless a decision under paragraph 5 has been taken and notified.	Therefore, we suggest that this new registration requirement would not be applicable to already active and registered IIPs and that they would be deemed to be registered. Alternatively, there needs to be a transitional period during which existing IIPs can continue to provide their services to market participants and during which they can be newly registered.
2. An IIP shall have adequate policies and arrangements in place to make public the inside information required under Article 4(1) as close to real time as is technically possible, on a reasonable commercial basis. The information shall be made available 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:	
(a) the message ID and event status;	

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(b) the publication date, the time and the start and stop of the event;	
(c) the market participant name and the market participant identification;	
(d) the bidding or balancing zone concerned;	
(e) and, where applicable:	
(a) the type of unavailability and the type of event;	
(b) the unit of measurement;	
(c) the unavailable, the available and the installed or technical capacity;	
(d) the reason for the unavailability;	
(e) the fuel type;	
(f) the affected asset or unit and its identification code.	
4. An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside	

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information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.	
An IIP shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of inside information, minimise the risk of data corruption and unauthorised access and to prevent inside information leakage before publication. The IIP shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times.	
The IIP shall have systems in place that can quickly and effectively check inside information reports for completeness, identify omissions and obvious errors, and request re-transmission of any such erroneous reports.	
5. The Agency may withdraw the registration of an IIP where the latter:	The newly established Articles 4a does not foresee any contingency for IIPs already approved by ACER / used by market participants before entering into force of this Regulation. Hence, an information requirement needs to be put in place in order to avoid disruption when ACER withdraws an authorization, so that market participants can put contingency measures into place in a timely fashion.
(a) does not make use of the authorisation within 12 months, expressly renounces the authorisation or has provided no services for the preceding six months;	
(b) obtained the registration by making false statements or by any other irregular means;	

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(c) no longer meets the conditions under which it was registered or deemed to be registered;	Consequential amendment to changes of paragraph 1.
(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 regulatory ~~competent~~ authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP and shall ensure that all users of the concerned IIP are informed of the decision not later than three months before the entry into force of its decision.	An information requirement needs to be put in place in order to avoid disruptions when ACER withdraws an authorization, so that market participants can put contingency measures into place in a timely fashion, i.e., allow time for the users to transition to another IIP. Adoption to REMIT terminology.
Where the Agency has withdrawn the registration the Agency needs to allow sufficient time for market participants to set up with a new IIP. Where no suitable IIP can be found, market participants can discharge their publication obligation through other means such as their website.	On market participants side the withdrawal of authorization to IIPs could be critical. The majority of active market participants have in place technological exchange protocols with the IIPs that they use as service providers to comply with REMIT provisions. The settings of these protocols require time and resources and cannot be replaced from one day to the other. For this reason, the process of authorization withdrawals of an IIPs that have active clients need to set a reasonable period of time for the switch of communication flows to another IIP. In fact, even if the proposed text points out that when a registration has been withdrawn, the IIP concerned shall ensure orderly substitution including the transfer of data and the redirection of reporting flows, this is not sufficient to grant that also activity on market participants' side are orderly

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	performed without generating disruptions that, for what concerns the management of inside information, may be very significant.
6. The Commission shall, by means of implementing acts, specify:	
(a) the means by which an IIP shall comply with the inside information obligation referred to in paragraph 2;	
(b) the content of the inside information published under paragraph 2 in such a way as to enable the publication of information required under this Article;	
(c) the concrete organisational requirements for the implementation of paragraph 4.	
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;	
[6] The following Article 5a is added:	
“Article 5a	The new Article 5a shall only apply to algorithmic trading and direct electronic access relating to wholesale energy products which are not financial instruments. Otherwise, the Article 5a REMIT and the Article 17 of MiFID II would be both applicable and create an unnecessary double layer of regulation and supervision. See below changes to Article 5a (4), change to the definiton of algorithmic trading and above comments to Article 1 (2).
Algorithmic trading	

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1. A market participant that engages in algorithmic trading shall have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market. The market participant shall also have in place effective systems and risk controls to ensure that the trading systems comply with this Regulation and with the rules of an organised market place to which it is connected. The market participant shall have in place effective business continuity arrangements to deal with any failure of its trading systems and shall ensure its systems are fully tested and properly monitored to ensure that they meet the requirements laid down in this paragraph.	
2. A market participant that engages in algorithmic trading in a Member State shall notify this engagement to the national regulatory authorities of its Member State ~~and to the Agency~~.	Notification to NRAs is sufficient.
Within the scope of their investigatory powers, t~~T~~he 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~~ upon a reasoned and specific request, 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	Market participants should only be required to provide information in relation to trading strategies and trading parameters in relation to an NRA use of its investigatory powers. A general requirement to provide this information in relating to non-algorithmic trading activity does currently not exist in REMIT and should not be introduced. Under MiFID/financial market legislation as implemented in the national regimes, non-investment firms using algorithms have to notify regulators (in very few countries) only about the use of an algorithm. Details such as the trading

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ensure that the requirement laid down in paragraph 1 are satisfied and details of the testing of its trading systems.	parameters are strictly confidential/proprietary to the owner of the algorithm and do not have to be provided on ad hoc or regular basis: this is only requested if there is a formal investigation. We are concerned that the current drafting could result in obligations [at national level] which are more intrusive than the implemented financial legislation requirements, and ultimately disproportionate. Alternative a general requirement to provide on a reasoned request details only on the controls and compliance associated with algorithmic trading is more appropriate. The market participants should inform NRAs only on the basis of a reasonable request, which needs to relate to specific aspects to avoid a general inquiriy request, in particular the concrete suspicion, date and furhter details; otherwise, market participants cannot connect the suspicious trades/orders to the relevant algorithms.
The market participant shall arrange for records for 5 years to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.	A reasonable record keeping timeline needs to be defined.
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 the ~~a regular or ad-hoc~~ basis of a reasonable request, a description of their~~the~~ systems and controls referred to in paragraph 1 and evidence that those have been applied.	

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The market participant shall arrange for records to be kept in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.	
4. This article is without prejudice to obligations under Directive (EU) 2014/65 and does not apply to algorithmic trading and direct electronic access relating to wholesale energy products which are financial instruments and to which Article 17 of Directive (EU) 2014/65 applies.”;	The new Article 5a shall only apply to algorithmic trading and direct electronic access relating to wholesale energy products which are not financial instruments. Otherwise, the Article 5a REMIT and the Article 17 of MiFID II would be both applicable and create an unnecessary double layer of regulation and supervision. See above comments to Article 1 (2). The former delineation between REMIT and MAR of the current Art. 1 (2) sentence 2 with regard to the application of the Insider Trading and Market Abuse Prohibition has been deleted (“Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies”). Art. 2 (2) (a) of MAR does only carve-out spot energy (gas and power) contracts, which are wholesale energy products, from the Art. 12 (Market Manipulation) and Art. 15 (STOR for PPAETs). This creates a double layer of regulation, supervision and enforcement as follows: Therefore, Art. 3 and 5 REMIT, but also the new provisions of the REMIT proposal, such as on algorithmic trading and direct electronic access pursuant to the new Article 5a and the amended STOR Regime under Art. 15, would apply to wholesale energy products which are financial instruments and to which the MAR applies. Consequently, the national regulatory authorities (NRAs) and the financial market authorities (National Competent Authorities – NCAs) are both competent for the supervision and enforcement of these market abuse prohibitions and compliance with the above-mentioned new/amended REMIT

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	obligations with regard to these financial instrument products under REMIT and MAR. In principle, it would be more appropriate and proportionate if for certain provisions a delineation of the scope of application and hence competence between the different regulatory authorities, here NRAs and NCAs, is introduced to avoid a double layer of regulation, supervision, notification requirements, etc. This applies in particular to the new provisions of the REMIT proposal with regard to algorithmic trading and direct electronic access pursuant to the new Article 5a and the amended STOR Regime under Art. 15.
[7] in Article 7, paragraph 1 is replaced by the following:	
"1. ACER shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation or attempts thereof. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.";	
[] New articles ~~from~~ 7a ~~to 7d are~~is added:	This EC proposal needs to be given more consideration. This EC proposal would perpetuate the emergency measures taken under the Council Regulation (EU) 2022/2576 on "*Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders" (hereinafter "EU Council Regulation").* However, the emergency situation, i.e., energy crisis, justifying these measures is no longer prevalent. This raises the question of compatibility of this regime with the TFEU. This regime cannot be based on Article 122 (1) of the TFEU anymore and might infringe other TFEU provisions, such as Article 101 and 102 TFEU. This "LNG price information system" (production and publication of LNG Price Assessment/LNG Benchmark) is an ACER task which is new and alien to REMIT and needs more consideration if and how this should be continued. In particular, it needs to

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	be assessed in which context (in terms of legal instrument) this price information system should be embedded: it could be embedded into REMIT and the REMIT Implementing Act (Commission Implementing Regulation (EU) No 1348/2014); it could be the ACER Regulation; it could be energy market transparency regulation (transparency regulations, e.g. 543/2013 for power and 715/2009 as amended for gas). Also, it is questionable if both an LNG price assessment and a LNG benchmark as currently defined under the EU Council Regulation should be produced and published by ACER. The spread between the LNG price assessment and the settlement price for TTF Gas Futures can be calculated by market participants themselves and this is specifically tailored to the temporary Market Correction Mechanism under the EU Council Regulation ("MCM"). At such time as the MCM is no longer in place then the LNG Benchmark is no longer required. We recommend that the provision should be limited to the production and publishing of LNG price assessment and a more general LNG benchmark not linked to the MCM. Data collection by ACER and transaction reporting by market participant is an existing regulatory concept of REMIT. Hence, this LNG data reporting could fit into REMIT and the REMIT Implementing Act. However, a simple copy-paste of the LNG data reporting regime under the above-mentioned EU Council Regulation is neither required nor appropriate. Such approach would have the effect of segregating the LNG data reporting from the current REMIT reporting system. The resultant lack of integration will create inefficiencies like the duplication of reporting obligation and data collection platforms. It should be also noted that the current LNG data collection under the Council Regulation (EU) 2022/2576 has many technical difficulties (manual fulfillment, limited access, no automation...) that could be easily solved with the integration into a more advanced and adequate system like REMIT data reporting. For these reasons this LNG data reporting regime needs to be embedded into the current REMIT reporting regime and needs substantial improvements. Also, the definition of the technical details of transactions reporting is usually done through implementing

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	regulations, i.e., changes to the Commission Implementing Regulation (EU) No 1348/2014. The LNG Data Reporting can be thus dealt with separately from the LNG price information system. Set against this background, we propose the following approach: • We propose to either (a) to delete from REMIT certain definitions related to LNG data reporting/price assessment/benchmark in Article 2 and Article 7a to 7d from the EC REMIT proposal and to integrate those provisions into the Commission Implementing Regulation (EU) No 1348/2014 or/and (b) to keep and amend those provisions substantially, both to create an appropriate, proportionate and REMIT like LNG reporting and LNG price system. In any case these provisions need to be aligned with the current concept of REMIT transaction reporting and thus need further improvements. • Hence, a new general provision should be formulated in Article 8 to include the LNG data collection within the existing REMIT framework leaving the definition of technical reporting parameters to amendments to Commission Implementing Regulation (EU) No 1348/2014. A proposal for changes to Article 8 is made below. • This means that some of the new Articles 7b-d or sections of it can deleted. • The production and publication of the LNG price assessment and LNG Benchmark can be defined in Article 7a and sub-provisions from the other new Articles 7b-d (as appropriate) can be integrated into this provision. • Certain (sub-)provisions are deleted as they shall not be transferred to the Commission Implementing Regulation (EU) No 1348/2014 as they are not appropriate in the REMIT context and/or raise concerns and/or are duplicative.
"Article 7a	Only one new Article is needed for the production and publication of LNG price assessments and general LNG benchmarks. The reporting of LNG market data is to be embedded into the given reporting regime under the general data collections provision of Article 8.

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Production and Publicaition by ~~Tasks and powers of~~ ACER ~~to carry out~~ of LNG price assessments and benchmarks	
1. ~~As a matter of urgency,~~ ACER shall produce and publish a ~~daily~~ LNG price assessment and LNG benchmark in accordance with a methodology to be established by ACER and this based on the LNG market data reporting under Article 8 (1b) ~~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.	See reasoning above. Scope of article to be limited to production and publication of LNG price assessment and LNG benchmark, more flexibility should be introduced by deleting the daily publication requirement. The collection of LNG market data is to be integrated in the current concept of REMIT and hence an according proposal to amendment Article 8 is made below and hence this data collection can be deleted here in this Article. Therefore, reference is made to the general data collection provision of Article 8 with the ultimate result that reporting details are to be regulated in the Commission Implementing Regulation (EU) No 1348/2014.
~~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 LNG market data.~~	See above. This is not appropriate anymore. If at all, a more general LNG benchmark is to be produced and published.
2. For the purposes of the first subparagraph, ACER may make use of the services of a third party.	Integrated sub-paragraph 2 from Article 7b below fits better in this context.
3. 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	Article 7d fits better in this context of Article 7a.

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assessments and LNG benchmarks, taking into account the views of LNG market participants."; 	
4. The Commission shall, by means of implementing acts: [a] adopt rules to define the production and publication of LNG price assessments and LNG benchmarks [b] adopt rules for the LNG reference price assessment and LNG benchmark methodology of ACER [c] adopt rule for the timing and frequency of production and publication of LNG price assessments and LNG benchmarks. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of the implementing acts adopted under Article 8 (2) and (6) with regard to the LNG market data reporting.	It is more appropriate to define details of this regime in Commission implementing acts.
~~3. By way of derogation from Article 3(4), point (b), of this Regulation, the market participant obligations and prohibitions of this Regulation shall apply to LNG market participants. The powers conferred on ACER under this Regulation and Implementing Regulation (EU) No 1348/2014 shall also apply in relation to LNG market participants including the provisions on confidentiality.~~	As far as LNG market participants are concerned there is no reason of having such a provision.
~~Article 7b~~	This Article is not needed anymore, because it is duplicative and should instead be integrated into the provisions of Article 7a.
~~Publication of LNG price assessments and benchmark~~	

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~~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.~~	See reasoning above.
~~2. For the purposes of this Article, ACER may make use of the services of a third party.~~	This sub-paragraph is integrated into Article 7a
~~Article 7c~~	This entire article is to be deleted and insofar necessary to be integrated in the new Article 7a and the existing Article 8.
~~Provision of LNG market data to ACER~~	It is not appropriate to install a separate reporting regime only for LNG market data reporting and to segregate it from the existing data reporting under Article 8. Therefore, for the purpose of production and publication of the LNG price assessment and benchmark a reference is made in the new Article 7a to the general data collection provision of Article 8.
~~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 collection of LNG market data is to be integrated in the existing framework of REMIT. In accordance with this recommendation and we have proposed to amend Article 8 below. As a consequence this provision on data collection can be deleted.
~~2. The Commission may adopt implementing acts specifying the point in time by which LNG market data is to~~	The implementing acts for reporting, incl. for LNG market data reporting, are better regulated and adopted under the Article 8 regime. The technical

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~~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.~~	reporting details as mentioned in this Article 7c (1), (2) and (3) should be regulated in an implementing act (Commission Implementing Regulation (EU) No 1348/2014).
~~3. Where appropriate, ACER shall, after consulting the Commission, issue guidance on:~~	ACER guidance is already regulated and possible under the new Article 16b and hence ACER can issue guidance under that provision also in respect to LNG market data reporting.
(~~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 established by ACER, where possible using already existing and available procedures.~~	
~~Article 7d~~	This Article is better integrated into the new Article 7a
~~Business continuity~~	
~~ACER shall regularly review, update and publish its LNG reference price assessment and LNG benchmark~~	

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~~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.";~~	
[8] Article 8 is amended as follows:	
[ ] the paragraph 1 is amended as follows:	
(1) Market participants and organised market places, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide in accordance with the paragraphs 1(a) to 5 of this Article the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. As far as the overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled	Consequential amendments following the introduction of a single-side reporting by OMPs in the new Article 8 (1a). This means that market participants are only responsible for reporting their bilateral OTC transactions in wholesale energy products, whereas OMPs are responsible for reporting the transactions in wholesale energy products entered into their venues. Market participants are solely responsible for the reporting of transactions concluded outside of organised markets, hence the amendment to the the last sentence (see highligthed text). Furthermore, consequential amendents of Article 6 of the Commission Implementing Regulation (EU) No 1348/2014 are necessary.
[a] the following paragraph 1a is inserted:	A direct reporting obligation (single-side reporting) of Organised Market Places (OMPs) for wholesale energy transactions and orders entered via their venue would improve the quality and efficiency of reporting. Further changes to Article 6 of Commission Implementing Regulation (EU) No 1348/2014 are necessary.

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"(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places, those market places shall be solely responsible, and legally liable, for make~~e~~ing available to the Agency data relating to the transactions and the order book, as well as for ensuring the correctness of the details reported. ~~or,~~ U~~u~~pon the Agency's request, organised market places shall give the Agency access to the order book so that it is able to monitor trading. To ensure that the organised market place has all the data it needs to fulfil the reporting obligation under the first subparagraph, the market participants shall provide the organised market place with the details of the wholesale energy product concluded, which the organised market place cannot be reasonably expected to possess. The market participant shall be responsible for ensuring that those details are correct. Market participants shall provide the Agency with a record of wholesale energy market transactions entered, concluded or executed outside of organised market places."; [ ] the following paragraph 1b is inserted:	OMPs should report to ACER the transactions and orders entered, concluded or executed at their venues. OMPs should bear full responsibility and liability on the reporting of the transactions and orders, other than accuracy of (counterparty) data to be provided by the market participants. This approach is applied under EMIR for single-side reporting by financial counterparties on behalf of non-financial counterparties. It is clarified that market participants are only responsible for reporting their bilateral OTC transactions in wholesale energy products. We propose to delete from REMIT to amend certain definitions related to LNG data reporting/price assessment/benchmark and either to delete Article 7a to 7d from the REMIT proposal and to integrate those provisions into the Commission Implementing Regulation (EU) No 1348/2014 or/and to amende these provisions. These provisions need then to be aligned with the current concept of REMIT transactions reporting and need further improvements. A new general provision should be formulated in Article 8 to include the LNG data collection within

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	the existing REMIT framework leaving the definition of technical reporting parameters to amendments to Commission Implementing Regulation (EU) No 1348/2014. An proposal for changes to Article 8 ismade below.
"LNG market participants, or a person or authorty listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of LNG market data."	
[ ] paragraph 2 is amended as follows:	
"(2) The Commission shall, by means of implementing acts: (a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1, 1a and 1b and appropriate *de minimis* thresholds for the reporting of transactions where appropriate; (b) adopt uniform rules on the reporting of information which is to be provided in accordance with paragraph 1, 1a and 1b; (c) lay down the timing and form in which that information is to be reported. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting systems."	Changes corresponding to the changes under Article 8 (1a) and (1b)
[b] in paragraph 2, the second subparagraph is replaced by the following:	

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"Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing transaction reporting systems for monitoring trading activity to detect market abuse."	
[c] in paragraph 3, the first subparagraph is replaced by the following:	
3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Regulation (EU) 600/2014 or Regulation (EU) 648/2012 shall not be subject to double reporting obligations relating to those transactions.	
[d] paragraph 4 is amended as follows:	
(i) point (d) is replaced by the following:	
(d) an organised market place, a trade-matching system or other person professionally arranging ~~or executing~~ transactions;	Same reasoning as for the PPAET definition
(ii) the following second subparagraph is added:	
"The information shall be provided through registered reporting mechanisms. The registered reporting mechanisms shall be solely responsible, and legally liable, for making the recieved information available to the Agency";	While it is market participants obligation to repor their transactions to the Agency through RRMs, they do not have any leverage over RRMs. Consequently, the responsibility and legal liability for the transmission of data to ACER must lie with the RRMs themselves. Market Participants should be responsible and liable only for sending their data to RRMs. Therefore, market participants should be

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	explicitly discharged from any liabilities when they are able to demonstrate that information has been submitted to RRMs for the reporting to ACER.
[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 through IIPs 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.";	This new insertion with regard to the disclosure of inside informations seems to be in conflict with the new provisions on IIP regulation and the obligations of market participants to disclose the inside information through IIPs. Hence, market participants should send through IIPs this informaiton to NRAs and ACER to avoid a dublication of reporting processes. See highligthed text.
[9] in Article 9, paragraph 1 is replaced by the following:	
"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~~ a Member State in which they are active.";	The current text of Art. 9 REMIT providing for a registration requirement for 3rd country market participants is more appropriate and should be retained in sentence 2. A cross-border own account trading activity in the EU should remain possible without an establishment of an office. Requiring 3rd country participants to have a physical presence in a member state could cause significant issues for them, including tax, employment to name but a few. This would constitute another cost and barrier to entry to the EU wholesale energy market, disincentivizing 3rd country market participants from enter these markets and providing gas and power to the EU. Consequently, this amendment potentially can damage the liquidity of EU wholesale energy

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	markets and their competitiveness. It could also be in conflict with provisions already in place at national levels for the carrying out of activities on the physical markets. As it has been already recognized by the European Commission study "*Upgrading the gas market - Regulatory and administrative requirements to entry and trade on gas wholesale markets in the EU -May 2020*" these kinds of provisions are an obstacle for operators to access EU markets. Moreover, it should be taken into account that for a non-EU based market participants to establish an office in the EU would have a negative impact also on its tax calculation, making the access to EU markets economically less attractive. The term of a registered office is extremely vague and can mean many thinks from an empty post box shell to an EU established operative branch from which the EU trading activities are controlled and executed. It would not be proportionate to oblige 3rd country firms to set up such a branch established in one or more EU MS if these branches are to be fully operative (staffed, equipped, trading infrastructure, etc.). It may also be in breach of the Brexit agreement for those entities domiciled in the UK. The concept of having to declare an office in the EU for cross-border activities of non-EU firms on EU wholesale energy and energy derivatives markets is a concept alien to the financial market regulation: • The request to have a registered office in the EU is super-equivalent to MAR as such requirement simply does not exist under MAR. • This is not necessary under MIFID II (under Art. 39 MIFID II *may* require establishment of branch for provision of investment services or performance of investment activities in the context of authorization as investment firm). However, for non-financial firms established in the EU and in 3rd countries, which are active on EU wholesale energy markets, this is not requested under MiFID II as they are currently exempted from a MiFID II authorization requirement). Therefore, no such national requirement has been reported/imposed on such firms.

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[10] the following Article 9a is inserted:	
"Article 9a	
Authorisation and supervision of the Registered Reporting Mechanisms	The orderly supervision of RRMs is crucial as these entities are essential infrastructure operators and service providers for market participant's compliance with REMIT obligations, here the reporting of transactions. It corresponds also to similar approach in MIFiD/R, i.e., it is aligned with ESMA's supervisory powers over trade repositories, approved reporting mechanisms and other data reporting services
1. The operation of an RRM shall be subject to prior authorisation by the Agency in accordance with this Article.	
The Agency shall authorise parties as RRM where:	
~~(a) the RRM is a legal person established in the Union; and~~	RRMs based in 3rd countries should be able to operate if they meet the relevant requirements. This corresponds to the regulations of trade repositories under EMIR: A trade established in a 3rd country may provide its services and activities to EU customers when it is recognised by ESMA if certain conditions are met There are currently numerous RRM's which are not established in the Union. This is a very concerning proposal. This would leave many market participants in a situation where they have to find another EU based RRM, which seems unnecessarily burdensome. See: https://data.europa.eu/data/datasets/acer-remit-list-of-registered-reporting-mechanisms-rrms?locale=en

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~~(b)~~ the RRM meets the requirements laid down in this Article.	
The authorisation to operate as RRM shall be effective and valid for the entire territory of the Union, and shall allow the RRM provider to provide the services for which it has been authorised throughout the Union. The RRMs that are already included into ACER's list at the moment of entry into force of this Regulation shall be considered as already registered, unless a decision under paragraph 4 has been taken and notified.	This new authorization requirement shall not trigger any disruption of transaction reporting and compliance of market participants with it. Therefore, we suggest that this new authorisation requirement would not be applicable to already active and registered RRMs and they would be deemed to be authorized. Alternatively, there needs to be a transitional period during which existing RRMs can continue to provide their services to market participants until they are granted the authorisation and during which they can apply for the required authorization.
An authorised RRM shall comply at all times with the conditions for authorisation referred to in this Article. An authorised RRM shall, without undue delay, notify ACER of any material changes to the conditions for authorisation.	
The Agency shall establish a register of all RRMs in the Union. The register shall be publicly available and shall contain information on the services for which the RRM is authorised and it shall be updated on a regular basis. Where the Agency has withdrawn an authorisation of an RRM in accordance with paragraph 4, that withdrawal shall be published in the register for a period of five years from the date of withdrawal.	We suggest that new registration would not be applicable to already active RRMs as they are already included in the ACER lists published on the REMIT portal.
2. The Agency shall regularly review the compliance of RRMs with this Regulation. For this purpose, RRMs shall report on an annual basis about their ~~activities~~ reporting	RRMs should report more specifically about their own reporting service provision.

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services to the Agency based a standardized Format defined by the Agency.	
3. RRMs shall have adequate policies and arrangements in place to report the information required under Article 8 as quickly as possible, and no later than within the timing laid down in the implementing acts adopted pursuant to paragraph 5 of this Article.	
RRMs shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an RRM that is also an OMP or market participant shall treat all information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.	
RRMs shall have sound security mechanisms in place designed to guarantee the security and authentication of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage, maintaining the confidentiality of the data at all times. The RRM shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at according to the timing laid down in the implementing acts adopted pursuant to Article 8(2) and (6).	
RRMs shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors caused by the market participant, and where such error or omission occurs, to communicate	

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details of the error or omission to the market participant and request re-transmission of any such erroneous reports.	
RRMs shall have systems in place to enable the RRM to detect errors or omissions caused by the RRM itself and to enable the RRM to correct and transmit, or re-transmit as the case may be, correct and complete transaction reports to the Agency.	
RRMs shall ensure a proportionate distribution of the fees to be paid under Article 32 (1) of Regulation (EU) 2019/942 towards their contracted market particitpants.	A plausiblitly check of ACER concerning the REMIT fees distribution by RRMs to Market Particpants is necessary.
4. The Agency may withdraw the authorisation of an RRM where RRM:	The newly established Article 9a does not foresee any contingency for RRMs already approved by ACER / used by market participants before entering into force of this Regulation. Hence, an information requirement needs to be put in place in order to avoid disruptions when ACER withdraws an authorization, so that market participants can put contingency measures into place in a timely fashion.
(a) does not make use of the authorisation within 18 months, expressly renounces the authorisation or has provided no services for the preceding 18 months;	
(b) obtained the authorisation by making false statements or by any other irregular means;	
(c) no longer meets the conditions under which it was authorised or deemed to be authorised;	Consequential amendment following amendment to first paragraph.

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(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.	
The Agency shall, where relevant, without undue delay, notify the national ~~competent~~ regulatory authority in the Member State where the RRM is established and all users of the concerned RRM of a decision to withdraw the authorisation of an RRM not later than three months before the entry into force of its decision.	An information requirement needs to be put in place in order to avoid disruptions when ACER withdraws an authorization, so that market participants can put contingency measures into place in a timely fashion. Adaptation to REMIT terminology.
The Agency shall ensure sufficient time in case of withdrawal of the authorisation for market participants to set up memebership with a new RRM.	The majority of active MPs have in place technological exchange protocols with the RRMs that use as service providers to comply with REMIT provisions. The settings of these protocols require time and resources and cannot be replaced from one day to the other. For this reason, the process of authorization withdraws of a RRM that have active clients need to set a reasonable period of time for the switch of communication flows to another RRM. In fact, even if the proposed text points out that when a registration has been withdrawn, the RRM concerned shall ensure orderly substitution including the transfer of data and the redirection of reporting flows, this is not sufficient to grant that also activity on MPs' side are orderly performed without generating disruptions.
5. The Commission shall by means of implementing acts specify :	
(a) the means by which an RRM shall comply with the information obligation referred to in paragraph 1; and	

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(b) the concrete organisational requirements for the implementation of paragraphs 2 and 3;-	
(c) an interface format for the data transfer of reportable transactions and orders.	The data interface for the data transfer between RRMs and market participants should be standardised. This would facilitate for market participants to change the RRMs, in particular if a RRMs cease to operate or ACER withdraws the authorisation.
Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2).”;	
[11] Article 10 is amended as follows:	
[a] paragraph 1 is replaced by the following:	
“1. ACER shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with the Commission, *national regulatory authorities, competent financial* market *authorities national competition authorities, ESMA and other relevant authorities* at Union level. *Before establishing such mechanisms, ACER shall consult with those authorities.”;*	
[b] the following paragraph 1a is inserted:	
“(1a) National regulatory authorities shall establish mechanisms to share information they receive in accordance with Article 7(2) and Article 8 with the	

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competent financial market authorities, the national competition authorities, the national tax authorities and EUROFISC and other relevant authorities at national level. Before establishing such mechanisms, the national regulatory authority shall consult with the Agency and with those parties.”;	
[c] the following paragraph 2a is inserted:	
“2a. National regulatory authorities shall give access to the mechanisms referred to in paragraph 1a of this Article only to authorities which have set up systems enabling the national regulatory authority to meet the requirements of Article 12(1).”;	
[13] Article 12 is amended as follows:	
[a] in paragraph 1, the second subparagraph is replaced by the following:	
“The Commission, national regulatory authorities, competent financial authorities of the Member States, national tax authorities and EUROFISC, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Article 4(2), Article 7(2) Article 8(5) or Article 10 and shall take steps to prevent any misuse of such information including according to applicable data protection laws.”;	
[b] paragraph 2 is replaced by the following	

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"2. Subject to Article 17, ACER ~~may decide to~~ shall 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."; [14] Article 13 is amended as follows: [a] paragraph 1 is replaced by the following: "1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligations set out in Articles 4, 8, 9 and 15 are applied. National regulatory authorities shall be competent to investigate all the acts carried out on their national wholesale energy markets and enforce this Regulation in accordance with the ne bis in idem pricinple thereto, irrespective of where the market participant registered pursuant to Article 9(1) carrying out those acts is resident or established.	ACER should be obligated to create aggregated, anonymized post-trade transparency for market participants based on existing reporting. The purpose of REMIT is to create (post trade) transparency to market participants, incl. about information which ACER possesses. It would allow market participants to better assess the market liquidity and prices and impact of fundamentals, in particular on the (non-standardized) OTC markets, and hence to better manage and mitigate their commercial risks, in particular in times of stresse market conditions. ACER can perform this task based on existing data reporting so that no extension of data reporting is necessary. Note: The reference to Article 17 guarantees the protection of personal data and commercially sensitive information. This provision should be linked to the "ne bis in idem" principle to avoid prosecution by the NRA where the activity takes place AND the NRA where the market participant is registered for the same activity.

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Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function . Those powers shall be exercised in a proportionate manner.	
Those powers may be exercised:	
(a) directly;	
(b) in collaboration with other authorities; or	
(c) by application to the competent judicial authorities.	
Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging ~~or executing~~ transactions as referred to in point (d) of Article 8(4).”;	Consequential amendment in line with re-calibartion of definition for persons professionally arranging transactions.
~~[b] the following paragraphs (3) to (9) are added:~~	As stated in Article 13 (1) the national regulatory authoritie (NRAs) should remain solely competent and responsible for the supervision and enforcement of REMIT prohibitions under Article 3 (prohibition of insider trading) and 5 (prohibition of market manipulation) and of the obligation under Article 4 (obligation to publish inside information). If at all, ACER should exercise such new supervisory and enforcement powers exclusively on IIPs and RRMs, for which ACER gets direct supervisory and enforcement powers under the new Articles 4a and 9a of the REMIT proposal. This approach would be consistent with the role of ESMA under financial market regulations and adopted changes to MiFIR

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	(see Art. 27a-27i and Art. 38a-38m of MiFIR) following the ESAs review (see pages 183-192 of the EC Proposal on ESA Review, COM(2017) 536 final of 20.9.2017). ESMA has no supervisory and enforcement powers under MiFID and MiFID and MAR with regard to market participants. Any consideration to expand ACER's direct supervisory, investigation and enforcement powers with regard to these REMIT provisions should respect the subsidiarity and proportionality principle according to Article 5 of the Treaty of the European Union. Furthermore, they would need to be necessary, appropriate and proportionate. There are considerable doubts if the EC proposals can meet those requirements. This would at first require an in-depth impact assessment, including corresponding cost/benefit analysis and – according to the EU's Better Regulation Principles - preceding consultation of concerned entities such as market participants, OMPs and IIPs and national regulatory authorities. The given assessments in the staff working document accompanying the REMIT Review Proposal (SWD(2023) 58 final) of 14.3.2023, pages 101-102) as well as in the proposal itself (COM(2023) 147 final of 14.3.2023, pages 8-11, 17, 52-53) are not sufficient. It is doubtful if the very wide and substantial shift of supervisory and enforcement powers from NRAs to ACER pursuant to Article 13 (3) to (7), Article 13a and 13 (b) complies with the principles of subsidiarity and proportionality according to Article 5 of the Treaty of the European Union and if they are necessary, appropriate and proportionate to guarantee an efficient supervision under REMIT. This is explained in more detail in the paragraphs below: • The existing REMIT framework provides the NRAs and ACER with the tools to conduct effective market monitoring, supervision and enforcement. In the context of the energy crisis, the NRAs and ACER recently used these powers to conduct a review of the market functioning and this oversight did not reveal material concerns about the energy market functioning. This is confirmed by ACER's preliminary assessment of Europe's high energy prices (link) and in its final assessment of the EU

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	wholesale electricity market design (link). ACER's conclusion is that the energy crisis is caused by the fundamental shortage in gas and electricity supply and not by the current market design and rules or market manipulation. Hence, there are no learnings from the energy crisis which requires these new ACER powers. • NRAs have already established effective networks of coordination between themselves and with ACER under the given REMIT framework (Article 16) to deal with REMIT breaches, incl. with cross-border cases. This has led to numerous investigations and sanctions with regard to REMIT breaches already. Hence, it is questionable if the new ACER powers are necessary to guarantee an effective supervisions and enforcement of REMIT and sanctioning of REMIT breaches. • It is more in line with the principle of subsidiarity and proportionality if this cooperation between the competent authorities is further expanded before any substantial shift towards an ACER empowerment for conducting investigations, on-site inspections and request for information is considered. • This strengenthing of an effective cooperation and coordination between NRAs, ACER and other authorities (incl. financial market authorities) is the aim of several proposals (see New Art. 1(3) 2nd sub-para., amended Art. 10, new Art. 10 (1a) and (2a), amended Art. 12 (a) 2dn sub-para., Art. 16 (2) 4th sub-para., new Art. 16 (3) point (e)). This seems to be a more approbriate and proportionate measures to achieve the intended aim of effective supervision and enforcement. If needed, this should be re-enforced before introducing the proposed new ACER powers. • Furthermore, the proposed new ACER power to issue guidelines and recommendations would already ensure a harmonized application of the REMIT provisions and hence also an EU-wide harmonized supervision and enforcement by NRAs. Hence, also insofar the new ACER powers seem not to be necessary. • The value of supervision and enforcement by NRAs lies in their strong knowledge of local markets, with their particularities (specific products

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	and market participants/places, language capabilities), accepted / best market practices and national legal frameworks. NRAs also have the best understanding of practical operations and business models of their national energy market and infrastructure. Hence, supervision and enforcement by NRAs seem to be more approbriate. ● Also, for these reasons the MAR does not take such an approach as it designates national authorities as the competent authority to supervise and enforce MAR and to sanction MAR breaches. Hence, this proposal goes far beyond the MAR approach and the intended alignment with MAR. ● If at all, ACER should exclusively exercise such new supervisory and enforcement powers exclusively on IIPs and RRMs, for which ACER gets supervisory and enforcement powers under the new Articles 4a and 9a of the REMIT proposal. This approach would be consistent with the changes to MiFIR (see Art. 27a-27i and Art. 38a-38m of MiFIR) following the ESAs review (see pages 183-192 of the EC Proposal on ESA Review, COM(2017) 536 final of 20.9.2017).
~~"3. In order to fight against breaches of the provisions of this Regulation, to support and complement the enforcement activities of the national regulatory authorities, and to contribute to a uniform application of this Regulation throughout the Union, the Agency may carry out investigations by exercising the powers conferred onto it by and in accordance with Articles 13a and 13b.~~	
~~4. The Agency may exercise its powers to ensure that the prohibitions set out in Article 3 and Article 5 and the obligations set out in Article 4 are applied where:~~	

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(~~a) acts are being or have been carried out on wholesale energy products for delivery in at least three Member States; or~~	
(~~b) acts are being or have been carried on wholesale energy products for delivery in at least two Member States and at least one of the natural or legal persons who is carrying or carried out these acts is resident or established in a third country but registered pursuant to Article 9(1); or~~	
(~~c) the competent national regulatory authority, without prejudice to the derogations referred to in Article 16(5), does not immediately take the necessary measures in order to comply with the request from the Agency referred to in Article 16(4)(b); or~~	
~~(d) the relevant information as defined in Article 2(1) of this Regulation is likely to significantly affect the prices of wholesale energy products for delivery in at least three Member States.~~	
~~5. The Agency may exercise its powers to ensure that the obligations set out in Article 15 are met where the persons are professionally arranging or executing transactions on wholesale energy products for delivery in at least three Member States.~~	
~~6. In exercising its powers, the Agency shall take into account the investigations in progress or already carried out in respect of the same cases by a national regulatory~~	

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~~authority pursuant to this Regulation as well as the cross-border impact of the investigation.~~	
~~7. Upon completion of its actions taken to exercise its powers pursuant to paragraph 4, the Agency shall draw up a report. The report shall be made public taking into account confidentiality requirements. If the Agency concludes that a breach of this Regulation took place, it shall inform the national regulatory authorities of the Member State or Member States concerned accordingly and require that the breach be dealt with in accordance with Articles 18. The Agency may recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.";~~	
~~[15] The following articles 13a to 13d are inserted:~~	
~~"Article 13a~~	
~~On-site inspections by the Agency~~	
~~1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.~~	
~~2. In order to fulfil its obligations under this Regulation, the Agency may conduct all necessary on-site inspections at any premises of the persons subject to the investigation. Where the proper conduct and efficiency of the inspection so require, the Agency may carry out that on-site inspection without prior announcement.~~	

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~~3. The officials of and other persons authorised by the Agency to conduct an on-site inspection may enter any premises of the persons subject to an investigation decision adopted by the Agency pursuant to paragraph 6 and shall have all the powers referred in this Article. They shall also have the power to seal any premises, property and books or records for the period of, and to the extent necessary for the inspection.~~	
~~4. In sufficient time before the inspection, the Agency shall give notice of the inspection to the national regulatory authority and other concerned authorities of the Member State where the inspection is to be conducted. Inspections under this Article shall be conducted provided that the relevant authority has confirmed that it does not object to those inspections.~~	
~~5. The officials of and other persons authorised by the Agency to conduct an on-site inspection shall exercise their powers upon production of a written authorisation specifying the subject matter and purpose of the inspection.~~	
~~6. The persons referred in this Article shall submit to on-site inspections ordered by a decision that shall be adopted by the Agency. The decision shall specify the subject matter and purpose of the inspection, appoint the date on which it is to begin, the legal remedies available under Regulation (EU) 2019/942 as well as the right to have the decision reviewed by the Court of Justice. The Agency shall consult the national regulatory authority of~~	

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~~the Member State where the inspection is to be conducted prior to adopting such decision.~~	
~~7. Officials of, as well as those authorised or appointed by, the national regulatory authority of the Member State where the inspection is to be conducted shall, at the request of the Agency, actively assist the officials of and other persons authorised by the Agency. To that end they shall enjoy the powers set out in this Article . Officials of the national regulatory authority may also attend the on-site inspection upon request.~~	
~~8. Where the officials of, as well as those authorised or appointed by, the Agency find that a person opposes an inspection ordered pursuant to this Article, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance, requesting, where appropriate, the assistance of the police or of an equivalent enforcement authority, to enable them to conduct their on-site inspection.~~	
~~9. If the on-site inspection provided for in paragraph 1 or the assistance provided for in paragraphs 7 and 8 requires authorisation by a judicial authority according to applicable national law, the Agency shall also apply for such authorisation. The Agency may also apply for such authorisation as a precautionary measure.~~	
~~10. Where the Agency applies for an authorisation as referred to in paragraph 9, the national judicial authority shall verify:~~	

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~~(a) that the decision of the Agency is authentic; and~~	
~~(b) that any measures to be taken are proportionate and not arbitrary or excessive having regard to the subject matter of the inspection.~~	
~~For the purposes of point (b) of the first subparagraph, the national judicial authority may ask the Agency for detailed explanations, in particular relating to the grounds the Agency has for suspecting that a breach referred to in Article 13(3) has taken place, the seriousness of the suspected breach and the nature of the involvement of the person subject to the investigation. By way of derogation from Article 28 of Regulation (EU) 2019/942, the Agency's decision shall be subject to review only by the Court of Justice.~~	
~~Article 13b~~	
~~Request for information~~	
~~1. At the Agency's request any person shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation. In its request the Agency shall:~~	
~~(a) refer to this Article as the legal basis for the request;~~	

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~~(b) state the purpose of the request;~~	
(~~c) specify what information is required, and following which data format;~~	
(~~d) set a time-limit, proportionate to the request, within which the information is to be provided;~~	
(~~e) inform the person that the reply to the request for information shall not be incorrect or misleading.~~	
~~2. For the purpose of information requests as referred to in paragraph 1, the Agency shall have the power to issue decisions. In such a decision the Agency shall, in addition to the requirements in paragraph 1 indicate the right to appeal the decision before the Agency's Board of Appeal and to have the decision reviewed by the Court of Justice in accordance with Articles 28 and 29 of Regulation (EU) 2019/942.~~	
~~3. The persons referred to in paragraph 1 or their representatives shall supply the information requested. The persons shall be fully responsible that the supplied information is complete, correct and not misleading.~~	
~~4. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the national regulatory authority of the Member State concerned shall afford them, or other relevant national regulatory authorities, the necessary assistance in ensuring the fulfilment of the~~	

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~~obligation referred to in paragraph 3, including through the imposition of penalties in accordance with applicable national law.~~	
~~5. Where the officials of, as well as those authorised or appointed by, the Agency find that a person refuses to supply the information requested, the Agency may draw conclusions on the basis of available information.~~	
~~6. The Agency shall, without delay, send a copy of the request pursuant to paragraph 1 or the decision pursuant to paragraph 2 to the national regulatory authorities of the concerned Member States.~~	
~~Article 13c~~	
~~Procedural guarantees~~	
~~1. The Agency shall carry out on-site inspections and request information in full respect of the procedural guarantees of market participants, including:~~	
~~(a) the right not to make self-incriminating statements;~~	
(~~b) the right to be assisted by a person of choice;~~	
(~~c) the right to use any of the official languages of the Member State where the on-site inspection takes place;~~	

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~~(d) the right to comment on facts concerning them;~~	
(~~e) the right to receive a copy of the record of interview and either approve it or add observations.~~	
~~2. The Agency shall seek evidence for and against the market participant, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.~~	
~~3. The Agency shall carry out on-site inspections and request information in full respect of applicable confidentiality and Union data protection rules.~~	
~~Article 13d~~	
~~Mutual assistance~~	
~~1. In order to ensure compliance with the relevant requirements set out in this Regulation, national regulatory authorities and the Agency shall assist each other.";~~	
[15] Article 15 is amended as follows:	
"Article 15	
Obligations of persons professionally arranging or ~~executing~~ transactions	

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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, which are entered, concluded or executed at organised market places, might breach Article 3~~, 4~~ or 5 shall notify the Agency and the relevant national regulatory authority without further delay.	As explained above for the new definitions of market participants, PPAETs and OMPs, it is not appropriate to include market participants trading on own account in the definition of persons professionally arranging transactions. The scope of STOR obligations should be limited to persons professionally arranging transactions for the following reasons: • Trading on own account is not the operation an OMP, it neither entails the reception and transmission of orders nor the arrangment of transactions. • The enlargement of the perimeter from PPAT under the current REMIT framework to PPAET seems only to fit the financial markets and does not take into consideration the specific characteristics of the physical ones. • Physical gas, power and LNG markets are very different from financial (commodity derivatives) markets and are characterized by the activities of many more and different entities, including small and medium sized suppliers acting at local/national level. • In addition, it needs to be considered that the proposed PPAET definition includes any energy consumers that procure energy (gas/power) to cover their own consumption and not for trading purposes. • All these items considered, it becomes clear that inclusion of a such range of parties into the definition and the consequential REMIT requirement to have in place a "suspicious transactions and orders reporting" will be disproportionate and will constitute a market barrier and endanger the liquidity of markets. The STOR regime under MAR should be limited to trading activities on OMPs and not be extended into the bilateral OTC wholesale activities. These are most relevant for the price formation process on wholesale energy market. It would be disproportionate to include the trading activities on bilaterally OTC markets. Besides the fact that these activities usually don't have a substantial impact on the price formation process on the wholesale energy markets, this would subject every energy consumer, incl. small and medium sized businesses, to the STOR regime when they are active on

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	wholesale energy markets to only cover their energy needs by entering into few transactions. The STOR regime should – as it is the case for MAR – be limited to breaches of Article 3 (insider dealing) and Article 5 (market manipulation). The proposed extension to Article 4 (disclosure of inside information) is super-equivalent to MAR and raises concerns as it is for market participants challenging to monitor the disclosure practice of 3rd parties, notably of IIPs.
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 ;	The STOR regime should – as it is the case for MAR – be limited to breaches of Article 3 (insider dealing) and Article 5 (market manipulation). The proposed extension to Article 4 (disclosure of inside information) is super-equivalent to MAR and raises concerns as it is for market participants challenging to monitor the disclosure practice of 3rd parties. As the extension of Article 15 obliging PPATs to monitor the disclosure of Inside Information (Art. 4) as well, it should be noted that this is also not in line with the existing obligation under REMIT to monitor orders and trades. Inside Information is not intrinsically connected with transaction data. This will require all PPATs to access all IIPs and to install additional routines to identify potential breaches of Art. 4. This will increase the costs for trading at OMPs, while the same monitoring is expected to be conducted by ACER and NRAs. Hence, the benefits of this extension of both obligations and costs are expected to be limited.
(b) guarantee that their employees carrying out surveillance activities for the purpose of this Article are	

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preserved from any conflict of interest and act in an independent manner.”;	
This article is without prejudice to obligations under Regulation (EU) No 596/2014 and does not apply to arranging of transactions in wholesale energy products which are financial instruments and to which Article 16 of Regulation (EU) No 596/2014 applies.”;	The amended Article 15 shall only to arranging of transactions in wholesale energy products which are not financial instruments. Otherwise, the Article 15 REMIT and the Article 16 of MAR would be both applicable and create an unnecessary double layer of regulation and supervision. See above comments to Article 1 (2) and Article 5a. The former delineation between REMIT and MAR of the current Art. 1 (2) sentence 2 with regard to the application of the Insider Trading and Market Abuse Prohibition has been deleted (“Articles 3 and 5 of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies”). Art. 2 (2) (a) of MAR does only carve-out spot energy (gas and power) contracts, which are wholesale energy products, from the Art. 12 (Market Manipulation) and Art. 15 (STOR for PPAETs). This creates a double layer of regulation, supervision and enforcement as follows: • Therefore, Art. 3 and 5 REMIT, but also the new provisions of the REMIT proposal, such as on algorithmic trading and direct electronic access pursuant to the new Article 5a and the amended STOR Regime under Art. 15, would apply to wholesale energy products which are financial instruments and to which the MAR applies. Consequently, the national regulatory authorities (NRAs) and the financial market authorities (National Competent Authorities – NCAs) are both competent for the supervision and enforcement of these market abuse prohibitions and compliance with the above-mentioned new/amended REMIT obligations with regard to these financial instrument products under REMIT and MAR. • Market participants would have to provide STORs to both the NRAs and NCAs and this potentially for the same transactions. In principle, it would be more appropriate and proportionate if for certain provisions a delineation

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	of the scope of application and hence competence between the different regulatory authorities, here NRAs and NCAs, is introduced to avoid a double layer of regulation, supervision, notification requirements, etc.
[16] Article 16 is amended as follows:	
[a] in paragraph 1, the fourth sub-paragraph is replaced by the following:	
"National regulatory authorities, competent financial authorities , the national competition authority and the national tax authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.”;	
[b] in paragraph 2, the following third subparagraph is added:	
"~~No later than 30 days before adopting a final decision on a breach of this Regulation, national regulatory authorities shall inform the Agency and provide it with a summary of the case and the envisaged decision.~~ The Agency shall maintain a public list of ~~such~~ decisions in English language under this Regulation, including the date of the decision, the name of the persons sanctioned, the Article of this Regulation that has been breached and the sanction applied. For the purpose of that publication, national	An information obligation for NRAs to inform ACER about open proceedings for REMIT breaches is not appropriate. ACER has no powers to intervene in ongoing proceedings and decisions. We support the creation of a case register as this helps market participants to better understand the application of REMIT by NRAs. The decisions shall be provided in English language so that all MP could benefit from this.

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regulatory authorities shall provide this information to the Agency within seven days of the issuance of the decision.”;	
[c] in paragraph 3, the following point (e) is added:	
“(e) the Agency and the national regulatory authorities shall inform the competent national tax authorities and EUROFISC where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a tax fraud.”;	
[16] the following Articles 16a and 16b are inserted:	
“Article 16a	
Delegation of tasks and responsibilities	This delegation from one NRA another NRA need to be drafted more specific, i.e., limited to cases where this is necessary and beneficial, in particular where the proposed re-enforced cooperation and coordination between NRAs is not sufficient. The scope of application for this delegation cannot in general relate to any matter of supervision of market participants or groups under REMIT. Numerous new / amended provision shall ensure stronger, more established, binding and regular cooperation, coordingation and data exchange between energy and financial regulators, including ACER and ESMA (see new Art. 1(3) 2nd sub-para., amended Art. 10, new Art. 10 (1a) and (2a), amended Art. 12 (a) 2dn sub-para., Art. 16 (2) 4th sub-para., new Art. 16 (3) point (e)). Consequently, the supervision, enforcement and sanctioning of market participants for REMIT breaches should remain with the competent NRA(s) as for these tasks the proposed re-enforced cooperation and coordination between NRAs etc. is

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	sufficient to put effecitve arrangments between NRAs in place. It is therefore questionable if the this delegation arrangements should be based on similar delegation possibilities under financial regulation (see Art. 28 ESMA Regulation: Delegation Agreements) and if it can be simply copy-pasted into the REMIT. In the ligh of the above, this seems not to be necessary or justified. Therefore, if that new provision is retained it needs to specifically set out in which matters a delegation can take place. If at all, we propose that this should be limited to technical implementation matters.
1. National regulatory authorities may, with the consent of the delegate, delegate tasks and responsibilities to other national regulatory authorities subject to the conditions set out in this Article. Member States may set out specific arrangements regarding the delegation of responsibilities that have to be complied with before their national regulatory authorities enter into such delegation agreements. ~~and may limit t~~The scope of delegation is limited to the implementation and supervision of data collection under Article 8 ~~to what is necessary for the effective supervision of market participants or groups~~.	
2. The national regulatory authorities shall inform the Agency of delegation agreements into which they intend to enter. They shall put the agreements into effect at the earliest one month after informing the Agency.	
3. The Agency may give an opinion on the intended delegation agreement within one month of being informed.	

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4. The Agency shall publish, by appropriate means, any delegation agreement as concluded by the national regulatory authorities, in order to ensure that all parties concerned are informed appropriately.	
Article 16b	
Guidelines and recommendations	
1. The Agency shall, with a view to 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 3, 4, 4a, 5, 8, 9 and 9a. The Agency can issue such guidelines and recommendations as binding instruments if the conditions of paragraph 3 of this Article are fulfilled.	The legal quality of this new instrument needs to be further considered and defined more explicitly. It is not apparent from the proposed text under paragraph (1) if the guidelines and recommendations are binding for NRAs and market participants. The proposed comply-or-explain approach seems to be complex and raises questions of legal uncertainty. Currently REMIT enables only Commission Delegated Acts and Implementing Acts to be binding upon NRAs and market participants. This indicates that these guidelines are rather of a non-binding nature. Hence, a clarification is made that these should be binding to reach the intended harmonization across the EU. However, if made binding these guidelines and recommendations should be subject to scrutiny and adoption by Commission as far as it concerns the interpretation, practical application or implementation of the level 1 text of REMIT. ACER should also be able to issue guidelines or recommendations on the application of Article 3 (prohibition in insider trading), 4 (obligation to publish inside information), Article 5 (prohibition of market manipulation) and of Article 9 (registration of market participants). This would complete the scope of this empowerment to clarify the relevant obligations of market participants and ensure an EU-wide harmonized application of these. The inclusion of Article 4 would be necessary if the proposed amendment under Article 4 (1a) is not implemented. It would allow ACER to set disclosure thresholds for inside information for power and gas.

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	Such thresholds would create legal clarity and certainty and facilitate the firms' compliance with the REMIT inside information disclosure regime. Also, it would avoid publishing not price relevant information and hence make the disclosure regime and in particular the IIPs more effective. EFET has commissioned a study for the German power markets, which confirms that a 100 MW threshold would be appropriate. This threshold was also confirmed through a report for the Nordic and the Baltic markets published by the Nord Pool Group. Also, the CRE produced a similar report. Such confirmed power and gas thresholds should be applicable in all situations except for extraordinary market situations such as national authorities' declaration of supply emergency, risk of black outs or rationing announced by TSOs.
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.	ACER shall be obligated to conduct public consultation as these concern obligations on market participants.
3. Before the issuance of a binding guideline or recommendation relating to the interpretation, practical application or implementation of the provisions of this Regulation, the Agency shall forward these to the Commission for its review and adoption. The Agency shall publish the guideline or recommendation as adopted by the Commission.	if made binding these guidelines and recommendations should be subject to scrutiny and adoption by Commission as far as it concerns the interpretation, practical application or implementation of the level 1 text of REMIT. ACER as an EU Agency is not entitled to issue on it own binding legal instruments.

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43. The national regulatory authorities, and market participants, organised market places, inside information platforms and register reporting mechanisms shall make every effort to comply with those guidelines and recommendations.	ACER's guidelines and recommendations should be applicable to every relevant REMIT entity.
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.	These comply-or-explain approaches might lead to complex proceedings/situations and a scattered compliance environment and hence might cause legal uncertainty. It should be stated by the REMIT text if these guidelines and recommendations are binding or non-binding.
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.	
7. The Agency shall include the guidelines and recommendations that it has issued in the report referred to in Article 19(1)(k) of Regulation (EU) 2019/942.”;	

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[18] in Article 17, paragraph 3 is replaced by the following:	
"3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant cannot be identified, without prejudice to cases covered by criminal law, the other provisions of this Regulation or other relevant Union legislation.";	
[19] Article 18 is replaced by the following:	
"1. The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, requisite intent, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.	As for the Market Abuse Directive the element of intention for criminal sanctions needs to be considered.
Without prejudice to any criminal sanctions and supervisory powers of national regulatory authorities under Article 13, Member States shall, in accordance with national law, provide for national regulatory authorities to have the power to adopt appropriate administrative sanctions and other administrative measures in relation to the breaches of this Regulation referred to in Article 13(1).	

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The Member States shall notify, in detail, those provisions to the Commission and to the Agency and shall notify it without delay of any subsequent amendment affecting them.	
2. Member States shall, in accordance with national law, and the ne bis in idem principle, ensure that the national regulatory authorities have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of this Regulation:	
(a) adopt a decision requiring the person to bring the breach to an end;	
(b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;	
(c) issue public warnings or notices;	
(d) adopt a decision imposing periodic penalty payments;	The term “periodic penalty payments” is not defined.
(e) adopt a decision imposing administrative pecuniary sanctions;	
in respect of legal persons, maximum administrative pecuniary sanctions of at least:	It is not appropriate to simply copy-paste the level of administrative sanctions from the MAR into the REMIT II. These maximun levels are disproportionate and do not take account of the specifics of energy markets and that energy market and their market players are fundamentally

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	different from traditional financial markets and their market players. **In any case, the level of sanctions must be reduced to avoid unintended consequences for the functioning and liquidity of the energy markets. The proposed level of fines can ultimately cause risk for the security of supply and will contribute to an increase in costs of the energy supply in the EU.** The reason is is that such disproportionate levels of sanctions can lead to a sharp reduction of the energy exploration, production and supply activities by market participants in the EU and even cause the exit of market participant as market participants would not be willing or able to economically bear the risk of such high sanctions based on the high turn-over figures for their commericial activities. In addition, it can create an disincentive for energy firms to efficiently hedge the price risks of their commercial activities as hedging activities usually create a higher turn-over figure. **To reduce commercial activities and/or no or less efficient hedging will lead to higher energy prices for consumers and the real economy**. Overall, this means that linking the fines to turnover seems not appropriate. **It would be more appropriate to base the calculation on the net profits in the last business year.** There is a reasonable differentiation to be made between the energy markets and financial markets regarding maximum levels of sanctions: • European energy markets are highly complex markets with many and different market participants, market places, intermediates, products and this across the EU. The main task of these markets is to guarantee the security of supply at afforadable prices for consumers and the real ecomomy • These energy markets are fundamentally different from traditional financial markets and their market players, products and market places as well as with regard to the functioning as tasks • There exist no fundamental problems with the functioning of energy markets in terms of transparency and market integrity and,

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	hence, no justification to impose such a high level of sanctions on the markets . The markets are functioning as expected and ACER did conclude in the context of the energy crisis that there are no signs of market manipulation which could have caused the high prices in gas markets. Energy markets are functioning according to supply and demand as expected. • Energy exploration, production, supply and trading companies typically have very high turnover, arising naturally from their exploration, power production and supply businesess and their consequential necessary hedging activities to reduce the risk of these commercial activities. The Energy exploration, production and supply are usually done in high volumes and hence lead to high turn-over figures. The following hedging activities necessarily lead to high turn over figures as well because energy firms usually have to trade a multiple of the explored, procuded or/and supplied energy volumes to efficiently hedge the price risks on energy markets. Hence, these energy market participants have no other choice than to conduct the above-mentioned commercial activities in a way that they will lead necessarily to high-turn over figures, not at least of their necessary hedging activities to reduce the energy price risks of their activities. To link the level of sanctions to the turnover is hence not the right calculation method for sanctions and can lead to unproportionally high fines. • It would hence create an disincentive to efficiently hedge the commercial risks. • Ultimately it can mean that firms are incentivised to even reduce the level of their commercial activities and hence the high level of sanctions potentiall endagers the security of supply. • The proposed level of sanctions represents are very high multiplier of the current level of sanction in most EU Member States. There is no real justification for such a very substantial increase as the current level of sanctions in EU Member States served as

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	sufficient deterence to conduct market abuse • This is not consistent with the level of REMIT fines from the past years. The level of the sanctions issued by NRAs for REMIT breaches in the past years was substantially lower than these proposed level. • Currently REMIT has around 16000 market participants registered in the European register of market participants, which are in terms of their activity, size and nature fundamentally different from financial market players (banks, investment frims, etc.) • The financial markets, incl. wholesale energy products which are financial products, and their market players are already subject to the market abuse prohibitions under MAR and the level of administrative and criminal sanctions. Hence, a doublication of the sanctions level is not necessary. Considering all these circumstances, fines linked to turnover and the proposed level of the sanctions seem both not appropriate.
i. for breaches of Articles 3 and 5, 3% ~~15%~~ of the total turnover (note: to base the calculation method on the net profits in the last business year would be more approbriate and avoid unintended consequences as explaind in the commentary) in the preceding business year;	**For the reasons explained above, at the maximum level of sanctions must be reduced.** **If the turn-over is kept as calculation basis, then the percentage must be reduced substantially, i.e., to 3%.** This can still represent a too high sanction given the high turn-over of energy firms. However, the calculation method based on turn-over is not the right matrix for sanctions. **It would be more approbriate to based the calculation on the net profits in the last 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.	

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In respect of natural persons, maximum administrative pecuniary sanctions of at least:	As explained above and hence for the same reasons, these maximun levels are disproportionate and need to be lowered.
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.	
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 following Article 21a is inserted:	
“Article 21a	

Amendments to Commission proposal	Comments
Reports and review	
(1) By [please insert the date = 3 years after the date of entry into force of this Regulation] the Commission shall assess the application of this Regulation and prepare a general report. The Commission shall submit that report to the European Parliament and to the Council, together with any appropriate proposals.”;	The EU Commission shall review in particular what impact the new provisions, inter alia on algotrading, DEA, STOR and LNG data reporting, have on the market functioning and if they show any unintended adverse consequences on the liquidity of EU energy markets.
(2) To ensure effective transparency and efficient monitoring without posing excessive burden on market participants by 30 June 2024 Member States shall perform a review of all their existing reporting requirements related to wholesale gas and power trading activities and submit to the Agency a report outlining the purpose and scope of their national reporting requirements. Should ACER identify cases of reporting requirements that overlap with the reporting requirements foreseen in this Regulation, by 31 December 2024 the Commission shall submit a report to the European Parliament and to the Council, together with any appropriate proposals for the elimination of any such case of double reporting in the context of national legislation.	A review followed by a legislative proposal is needed to address the current issue of double reporting in certain EU Members States.
Article 2	

Amendments to Commission proposal	**Comments**
Amendments to Regulation (EU) 2019/942	
Regulation (EU) 2019/942 is amended as follows:	
[1] in Article 6, paragraph 8 is deleted.	
[2] in Article 12, point (c) is replaced by the following:	
(c) Pursue and coordinate investigations pursuant to ~~Articles 13, 13a, 13b and~~ Article 16 of Regulation (EU) No 1227/2011.	Consequential amendment following the deletion of the new provisions of Article 13 (3) to (9), 13a and 13b.
[3] in Article 32, paragraph 1 is replaced by the following:	
"1. Fees shall be due to ACER for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of Regulation (EU) No 1227/2011. The fees shall be paid by registered reporting mechanisms and inside information platforms. ~~Revenues from those fees may also cover the costs of ACER for exercising the supervision and investigation powers pursuant to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.~~".	Consequent amendment following the proposed deletion of Article 13 (3) to (9) and 13 (a) to (d).
Article 3	
Amendments to Commission Implementing Regulation (EU) No 1348/2014	

Amendments to Commission proposal	Comments
Commission Implementing Regulation (EU) No 1348/2014 is amended as follows:	
[ ] Article 6 paragraph 1 is amended as follows:	
1. "Market participants shall report details of wholesale energy products which have been concluded outside an organised market and organised market places shall report details of whosesale energy products which have been executed at organised market places, including matched and unmatched orders, to the Agency through trade matching or trade reporting systems."	Amendment to align with change to Article 8 REMIT to introduce single-sided-reporting by OMPs.
[1] Article 7a is added:	
"Article 7a	
LNG market data ~~quality~~	
1. For the purpose of LNG market data collection, the following data field should be included to the Annex of this Commission Implementing regulationshall~~shall include~~:	In order to achieve a more efficient integration between REMIT and LNG data reporting, Annex of Commission Implementing regulation should be supplemented by just 3 fields instead having a separate report with 13 new fields.
(a) the indication if the record is reffered to LNG commodty or to gas commodity~~parties to the contract, including buy/sell indicator~~;	

Amendments to Commission proposal	Comments
(b) the terms of delivery ~~reporting party~~;	
(c) the vessel ID ~~transaction price~~;	
~~(d) the contract quantities;~~	
~~(e) the value of the contract;~~	
~~(f) the arrival window for the LNG cargo;~~	
~~(g) the terms of delivery;~~	
~~(h) the delivery points;~~	
~~(i) the timestamp information on all of the following:~~	
~~(i) the date and time of placing the bid or offer;~~	
~~(ii) the transaction date and time;~~	
~~(iii) the date and time of reporting of the bid, offer or transaction;~~	
~~(iv) the receipt of LNG market data by ACER.~~	
~~2. LNG market participants shall provide ACER with LNG market data in the following units and currencies:~~	Not consistent with a full integration in REMIT.

Amendments to Commission proposal	Comments
~~(a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable;~~	
~~(b) contract quantities shall be reported in the units specified in the contracts and in MWh;~~	
~~(c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;~~	
~~(d) delivery point shall indicate a valid identifier listed by ACER such as referred to in the list of LNG facilities subject to reporting pursuant to Regulation (EU) No 1227/2011 and Implementing Regulation (EU) No 1348/2014; the timestamp information shall be reported in UTC format; (to be replaced with cross-references as appropriate)~~	
~~(e) if relevant, the price formula in the long-term contract from which the price is derived shall be reported in its integrity.~~	
~~3. ACER shall issue guidance regarding the criteria under which a single submitter accounts for a significant portion of LNG market data submitted within a certain reference period and how this situation shall be addressed in its daily LNG price assessment and LNG benchmarks.”.~~	
Article 4 Entry into force and application	

Amendments to Commission proposal	Comments
1. This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union.	
2. It shall apply from [24 months after entering into force], except for Article [insert Articles which need to be activaties under which Commission needs to adopt Delegated and Implementing Acts before the date of application]	The proposed immediate application after entering into force is too short term. Materials changes to EU Regulations which trigger new/changes Implementation and/or compliance obligations of market participants, IIPs, RRMs, OMPs, PPAETs are usually subject to sufficient transitional periods. Introduction of an 18-month transitional period seems more appropriate to enable market participants etc. to implement numerous new compliance obligations for and also to give Commission the time necessary to adopt delegated acts. For example, MAR was published in OJ on 12.06.2014, but applied only from 3 July 2016, i.e., ca. 2 years later (see Art. 39 (2) MAR).
This Regulation shall be binding in its entirety and directly applicable in all Member States.	
Done at Strasbourg,	
For the European Parliament For the Council	
The President The President	