



2023/0076(COD)

9.6.2023

AMENDMENTS

18 - 65

Draft opinion

Ondřej Kovařík

(PE749.178v01-00)

Amending Regulations (EU) No 1227/2011 and (EU) 2019/942 to improve the Union's protection against market manipulation in the wholesale energy market

Proposal for a regulation

(COM(2023)0147 – C9-0050/2023 – 2023/0076(COD))

AM_Com_LegOpinion

Amendment 18
Markus Ferber

Proposal for a regulation
Recital 2

Text proposed by the Commission

(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council¹⁷, including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products.

Amendment

(2) Financial instruments, including energy derivatives, traded on energy markets are of increasing importance. Due to the increasingly close interrelation between financial markets and energy wholesale markets, Regulation (EU) No 1227/2011 should be better aligned with the financial market legislation such as Regulation (EU) No 596/2014 of the European Parliament and of the Council¹⁷, including with respect to the definitions of market manipulation and inside information respectively. More specifically the definition of market manipulation in Regulation (EU) No 1227/2011 should be slightly adjusted to mirror Article 12 of Regulation (EU) No 596/2014. To that end, the definition of market manipulation under Regulation (EU) No 1227/2011 should be adjusted to capture the entering into any transaction, or issuing any order to trade, but also any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, or (iii) employs a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products. ***However, the scope of this Regulation should not overlap with sectoral financial markets regulation. Therefore, financial instruments as defined in Directive 2014/65/EU of the European Parliament and of the***

Council^{17a}, should be carved out from the scope.

¹⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

¹⁷ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (OJ L 173, 12.6.2014, p. 1).

^{17a} Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (OJ L 173, 12.6.2014, p. 349).

Or. en

Amendment 19

Danuta Maria Hübner

Proposal for a regulation

Recital 5

Text proposed by the Commission

(5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities.

Amendment

(5) Sharing of information between national regulatory authorities and the national competent financial authorities is a central aspect of cooperation and detection of potential breaches in both the wholesale energy markets and the financial markets. In the light of the exchange of information between competent authorities pursuant to Regulation (EU) 596/2014 at national level, national regulatory authorities should share relevant information they receive with national financial and competition authorities, ***as well as with the European Agency for the Cooperation of Energy Regulators (ACER) and ESMA.***

Or. en

Amendment 20
Danuta Maria Hübner

Proposal for a regulation
Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) ACER and ESMA should closely coordinate in their supervisory activities, including, but not limited to, on issues arising from the adoption of this Regulation, in order to ensure that the most complete data sets are available to and that action can be taken as needed by the European or national regulatory authorities or competent financial authorities, as applicable. ACER and ESMA should particularly explore arrangements in order to ensure that the flow of information between them and national regulatory authorities and competent financial authorities is unobstructed, and that they can have, at all times, an overview of the energy markets in the Union.

Or. en

Amendment 21
Markus Ferber

Proposal for a regulation
Article 1 – paragraph 1 – point 1 – point a
Regulation (EU) No 1227/2011
Article 1 – paragraph 2

Text proposed by the Commission

Amendment

2. This Regulation applies to trading in wholesale energy products. ***This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards***

2. This Regulation applies to trading in wholesale energy products ***which are not*** financial instruments as defined ***in*** Article 4(1)(15) of Directive (EU) 2014/65. ***This Regulation is without prejudice*** to the application of European competition

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.

law to the practices covered by this Regulation.

Or. en

Justification

Clarification to avoid an overlap between provisions in REMIT and similar provisions governing financial instruments in MiFID/MiFIR and MAR.

Amendment 22

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point a

Regulation (EU) No 1227/2011

Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **under** Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Amendment

2. This Regulation applies to trading in wholesale energy products. **Articles 3, 5, 5a and Article 9(1) of this Regulation shall not apply to wholesale energy products which are financial instruments and to which Article 2 of Regulation (EU) No 596/2014 applies.** This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014, **Regulation (EU) No 596/2014** and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **in** 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.

Or. en

Justification

A clear delineation between EU financial regulation (MiFID, MAR, EMIR, etc.) and energy policy (REMIT) should be maintained. The definition in Art.2 is overly broad, creating an overlap with the financial acquis, which could result in redundant and potentially conflicting

prohibitions and obligations, as financial instruments are already subject to a comprehensive market abuse framework under financial regulation and trading venues offering financial instruments are regulated under MiFID/R and supervised by financial authorities. Under MiFID II, market participants are also already required to notify the National Competent Authorities (NCAs) when they engage in algorithmic trading and DEA in gas and power derivatives classified as financial instruments. An exemption for financial products from the scope of Article 9(1) is also included: financial instruments in the EU, including energy commodity derivatives reportable under REMIT, are subject to a comprehensive third country framework under MiFID II. Besides, the requirement in Art. 9(1) for third countries' firms to have an office in the EU should be carefully considered. If access to the EU markets by becomes excessively burdensome, third country firms may decide to stop trading in the EU and potential new entrants are unlikely to become active in European energy markets, negatively impacting Europe's main gas and electricity derivatives markets. Today, third country firms play a crucial role in providing in providing liquidity to the European markets, which would otherwise be 'unidirectional', and their absence will impair the ability of market participants to use the markets to manage risks of price fluctuations by locking in future prices.

Amendment 23
Ondřej Kovařík

Proposal for a regulation

Article 1 – paragraph 1 – point 1 – point a

Regulation (EU) No 1227/2011

Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **under** Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Amendment

2. This Regulation applies to trading in wholesale energy products. **Articles 3, 5, 5a and 9(1), second subparagraph of this Regulation shall not apply in relation to wholesale energy products which are financial instruments and to which Article 2 of Regulation (EU) No 596/2014 applies.** This Regulation is without prejudice to the application of Directive (EU) 2014/65, **Regulation (EU) No 596/2014**, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **in** Article 4(1), **point (15)**, of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Or. en

Justification

Following the logic of the Draft Opinion, this amendment aims to more precisely specify which aspects of the REMIT regulation should not apply to wholesale energy products which are financial instruments and therefore to which Article 2 of MiFID applies. The clear delineation between EU financial regulation (MiFID, MAR, EMIR, etc.) and energy policy (REMIT) should be maintained. The Commission proposal for the review of REMIT creates an undesirable overlap with EU financial regulation in the area of market abuse frameworks, third country access arrangements and algorithmic trading and direct electronic access (“DEA”) requirements. The amendments would result in overlapping and potentially conflicting prohibitions and obligations, as financial instruments are already subject to a comprehensive market abuse framework under financial regulation (i.e. MAR and CSMAD). Moreover, trading venues offering financial instruments are regulated under MiFID/R and supervised by financial authorities. Financial instruments in the EU, including energy commodity derivatives reportable under REMIT, are subject to a comprehensive third country framework under MiFID II. Under MiFID II, market participants are also already required to notify the National Competent Authorities (NCAs) when they engage in algorithmic trading and DEA in gas and power derivatives classified as financial instruments.

Amendment 24 **Michiel Hoogeveen**

Proposal for a regulation
Article 1 – paragraph 1 – point 1 – point a
Regulation (EU) No 1227/2011
Article 1 – paragraph 2

Text proposed by the Commission

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **under** Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation.

Amendment

2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) **No 596/2014, Regulation (EU)** 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined **in** 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.

Or. en

Justification

It is suggested to add a reference to the Market Abuse Regulation.

Amendment 25
Ondřej Kovařík

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 1227/2011

Article 2 – point 2 – point (a) – introductory part

Text proposed by the Commission

(a) entering into any transaction, **issuing** any order to trade or engaging in any other behaviour relating to wholesale energy products which:

Amendment

(a) entering into any transaction, **placing** any order to trade or engaging in any other behaviour relating to wholesale energy products which:

Or. en

Justification

To align with wording in MAR

Amendment 26
Ondřej Kovařík

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 1227/2011

Article 2 – point 2 – point a – point ii

Text proposed by the Commission

(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**

Amendment

(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. en

Justification

The deleted text should apply to both points i and ii of Paragraph 2a, and therefore is moved to reflect this

Amendment 27
Ondřej Kovařík

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point c

Regulation (EU) No 1227/2011

Article 2 – point 2 – point a – subparagraph ii – second subparagraph (new)

Text proposed by the Commission

Amendment

(ii) unless the person who entered into the transaction or placed 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

(This text should come as a separate subparagraph after points (i) and (ii) as it applies to both points.)

Or. en

Justification

Aligning the wording with MAR and applying the provision to both subparagraphs i and ii.

Amendment 28
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point d

Regulation (EU) No 1227/2011

Article 2 – point 2 – point c a (new)

Text proposed by the Commission

Amendment

(ca) “trading in spot and derivatives energy markets leading to false price

signals as well as the build up of asset bubbles”;

Or. en

Amendment 29
Ondřej Kovařík

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point j
Regulation (EU) No 1227/2011
Article 2 – paragraph 1 – point 17

Text proposed by the Commission

(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*.

Amendment

(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;

Or. en

Justification

The intention is to ensure that market participants are not held liable in the case of an IIP not reporting inside information to the Agency

Amendment 30
Markus Ferber

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point j
Regulation (EU) No 1227/2011
Article 2 – paragraph 1 – point 18

Text proposed by the Commission

(18) ‘algorithmic trading’ means trading in wholesale energy products where a computer algorithm automatically determines individual parameters of orders to trade such as whether to initiate the

Amendment

(18) ‘algorithmic trading’ means trading in wholesale energy products, *which are not financial instruments as defined in Article 4(1), point (15), of Directive (EU) 2014/65*, where a computer algorithm

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;

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;

Or. en

Amendment 31

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 18

Text proposed by the Commission

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

Amendment

(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;

Or. en

Amendment 32

Martin Schirdewan, José Gusmão

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

Amendment

(18a) ‘high-frequency algorithmic trading technique’ means an algorithmic trading technique characterised by:

(a) infrastructure intended to minimise network and other types of latencies, including at least one of the following facilities for algorithmic order entry: co-location, proximity hosting or high-speed direct electronic access;

(b) system-determination of order initiation, generation, routing or execution without human intervention for individual trades or orders; and

(c) high message intraday rates which constitute orders, quotes or cancellations;

Or. en

Amendment 33

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 18 a (new)

Text proposed by the Commission

Amendment

(18a) ‘asset bubble’ means the decoupling from the physically available electricity and gas in the market from the trade volumes contracted;

Amendment 34

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 18 b (new)

Text proposed by the Commission

Amendment

(18b) “over the counter (OTC) wholesale energy contract” means a wholesale energy contract the execution of which takes place bilaterally between market participants or via a broker and not on an energy exchange;

Or. en

Justification

In order to have more clarity in the text, there is a need to introduce a definition of ‘over the counter wholesale energy contract’. According to the European Court of Auditors special report, over the counter trades (OTC) accounted for 68 % of the electricity volumes traded in 2019 and 74 % of those traded in 2020. The majority of wholesale electricity is therefore traded on the least transparent markets and is therefore more prone to manipulation. It is important to lay down the conditions for improving the transparency of OTC wholesale energy trade.

Amendment 35

Markus Ferber

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – Point 19

Text proposed by the Commission

Amendment

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market

place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the 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);

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 as defined in Article 4(1), point (15), of Directive 2014/65/EU***, directly to the organised market place, 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);

Or. en

Amendment 36
Danuta Maria Hübner

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point j
Regulation (EU) No 1227/2011
Article 2 – paragraph 1 – point 19

Text proposed by the Commission

(19) ‘direct electronic access’ means an arrangement whereby a member, participant or client of an organised market place allows another person to use its trading code so the person may electronically transmit orders to trade relating to a wholesale energy product directly to the organised market place, including arrangements which involve the use by a person of the 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

Amendment

(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, 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);

(sponsored access);

Or. en

Amendment 37

Ondřej Kovařík

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 20

Text proposed by the Commission

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account.

Amendment

(20) ‘organised market place’ (‘OMP’) means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding **trading venues as defined in Article 4(1), point (24), of Directive 2014/65/EU and** purely bilateral trading where two natural persons enter into each trade on their own account.

Or. en

Justification

This is to avoid the duplication of reporting requirements and confusion of terms between REMIT and MiFID, ensuring OMPs are treated under REMIT and Trading Venues are treated under MiFID as regards reporting requirements

Amendment 38

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 21

Text proposed by the Commission

(21) ‘LNG trading’ means **bids, offers or** transactions **for** the purchase or sale of

Amendment

(21) ‘LNG trading’ means **entering into any** transactions, **including orders to trade**

LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

on an organised market place, relating to the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union.

Or. en

Justification

Alignment with REMIT terminology. Reference to 'bids' and 'offers' is relevant only when traded at OMPs, but (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.

Amendment 39 **Ondřej Kovařík**

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1– point 24a (new)

Text proposed by the Commission

Amendment

(24a) ‘benchmark’ means any index that is not a benchmark as defined in Article 3(1), point (29), of Regulation (EU) 596/2014 and that is periodically or regularly determined by the application of a formula to, or on the basis of, the underlying wholesale energy products, including estimated prices, 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;

Or. en

Justification

This is to avoid overlaps in concepts and definitions with financial services legislation as outlined in the Market Abuse Regulation

Amendment 40
Danuta Maria Hübner

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point j
Regulation (EU) No 1227/2011
Article 2 – paragraph 1 – point 25

Text proposed by the Commission

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

Amendment

(25) ‘LNG benchmark’ means ***a benchmark, as defined in point (25a(new)), with regard to LNG trading and published by ACER.***

Or. en

Justification

Intention is to provide for a more general definition of the term LNG benchmark. It seems reasonable to think that the spread between the LNG price assessment and the settlement price for TTF Gas Futures can be calculated by market participants themselves, while the proposed definition is based on the definition in the Benchmarks Regulation (EU 2016/1011) and limited to LNG trading, i.e., for LNG deliveries into the Union (it should not comprise financial benchmarks).

Amendment 41
Danuta Maria Hübner

Proposal for a regulation
Article 1 – paragraph 1 – point 2 – point j
Regulation (EU) No 1227/2011
Article 2 – paragraph 1 – point 25a (new)

Text proposed by the Commission

Amendment

(25a) ‘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 that wholesale energy product is not a

financial instrument.

Or. en

Justification

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 the Benchmark 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.

Amendment 42

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 2 – point j

Regulation (EU) No 1227/2011

Article 2 – paragraph 1 – point 25b (new)

Text proposed by the Commission

Amendment

(25b) ‘financial instrument’ means those instruments specified in Section C of Annex I of Directive 2014/65/EU;

Or. en

Justification

Attempt to align reference to financial instruments with MiFID definition.

Amendment 43

Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 3

Regulation (EU) No 1227/2011

Article 3 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Amendment

The use of inside information by cancelling or amending *an* order concerning a

The use of inside information by cancelling *orders* or amending *or modifying an*

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.;

existing order, the establishment of links or dependencies between orders, or any other action relating to entering into transactions of issuing orders, 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.;

Or. en

Justification

This aims at including in the definition all types of actions that are either related to orders and transactions or are part of the processes of issuing orders or entering into transactions in one or more wholesale energy markets.

Amendment 44 **Ondřej Kovařík**

Proposal for a regulation

Article 1 – paragraph 1 – point 4 – point a

Regulation (EU) No 1227/2011

Article 4 – paragraph 1 – subparagraph 2

Text proposed by the Commission

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.;

Amendment

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. ***Liability for the provision of inside information received by the IIPs to the Agency is therefore attributed to the IIPs.***

Or. en

Justification

This is to clarify that once market participants have disclosed inside information through IIPs, the IIP is then liable for the provision of that information to ACER

Amendment 45

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 5

Regulation (EU) No 1227/2011

Article 4a – paragraph 4a (new)

Text proposed by the Commission

Amendment

4a. Where ACER finds that an IIP has committed an infringement of requirements provided for in paragraphs 1 to 3 of this Article, it shall take one or more of the following actions:

(a) adopt a decision requiring the person to bring the infringement to an end;

(b) adopt a decision imposing fines with a maximum amount of EUR 200 000 or the corresponding value in the national currency in the Member States whose currency is not the euro;

(c) issue public notices.

Or. en

Amendment 46

Martin Schirdewan, José Gusmão

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 1227/2011

Article 5a – paragraph 1

Text proposed by the Commission

Amendment

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

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.

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. ***The use of high-frequency algorithmic trading techniques shall be prohibited.***

Or. en

Amendment 47
Jonás Fernández

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 1227/2011
Article 5a – paragraph 1

Text proposed by the Commission

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

Amendment

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 ***or unnecessary market volatility.*** 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

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.

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.

Or. en

Amendment 48
Jonás Fernández

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 1227/2011
Article 5a – paragraph 2 – subparagraph 3

Text proposed by the Commission

The market participant shall arrange for records 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.

Amendment

The market participant shall arrange for records to be kept ***for a period of 10 years*** 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.

Or. en

Amendment 49
Danuta Maria Hübner

Proposal for a regulation
Article 1 – paragraph 1 – point 6
Regulation (EU) No 1227/2011
Article 5a – paragraph 2 – subparagraph 3

Text proposed by the Commission

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph and shall ensure that those records are sufficient to

Amendment

The market participant shall arrange for records to be kept in relation to the points referred to in this paragraph ***for at least five years*** and shall ensure that those

enable its national regulatory authority to monitor compliance with this Regulation.

records are sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

Or. en

Amendment 50

Martin Schirdewan, José Gusmão

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 1227/2011

Article 5a – paragraph 3 – subparagraph 1

Text proposed by the Commission

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.***

Amendment

3. A market participant ***shall be prohibited from providing*** direct electronic access to an organised market place.

Or. en

Amendment 51

Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 1227/2011

Article 5a – paragraph 3 – subparagraph 3

Text proposed by the Commission

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.

Amendment

The market participant shall arrange for records to be kept ***for a period of 10 years*** in relation to the matters referred to in this paragraph and shall ensure that those records be sufficient to enable its national regulatory authority to monitor compliance with this Regulation.

Or. en

Amendment 52

Enikő Győri

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 1227/2011

Article 5a – paragraph 4a (new)

Text proposed by the Commission

Amendment

4a. This Article does not apply to transmission system operators.

Or. en

Justification

TSOs use automation of their processes (e.g. activation of balancing energy) to fulfil their obligations. It is impractical and inefficient to place obligations on TSOs regarding algorithmic trading as these areas are controlled under other legislation (e.g. Regulation 2017/2195).

Amendment 53

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 6

Regulation (EU) No 1227/2011

Article 5b (new)

Text proposed by the Commission

Amendment

Article 5b

Technical updating of the definition of an asset bubble

1. The Commission shall be empowered to adopt a delegated act in accordance with Article 20 in order to further specify the definition of an asset bubble.

2. The delegated acts referred to in paragraph 1 shall take into account at least:

(a) the total value of the energy physically consumed at EU level, as compared to the

total annual volume of OTC and exchange-traded energy derivative positions held by EU counterparties;

(b) the share of OTC and exchange-traded energy derivative contracts that are physically delivered on the expiry date in the total volume of energy derivative contracts traded by EU counterparties.

Or. en

Amendment 54

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 7

Regulation (EU) No 1227/2011

Article 7 – paragraph 1

Text proposed by the Commission

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.;

Amendment

1. ACER shall monitor trading activity in wholesale energy products, ***including OTC transactions, as well as in emission allowances and in oil and coal markets*** to detect and prevent trading based on inside information and market manipulation or attempts thereof, ***as well as to analyse links between such trading and the events occurring in the related energy product markets***. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8.

Or. en

Justification

The Agency should monitor the interactions between electricity and gas markets with the markets for oil, coal and CO₂, in order to ensure a comprehensive understanding of market developments.

Amendment 55

PE749.293v02-00

26/33

AM1280648EN.docx

Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 1 – paragraph 1 – point 7
Regulation (EU) No 1227/2011
Article 7 – paragraph 1a (new)

Text proposed by the Commission

Amendment

1a. The Agency shall have access to information on the physical reality of grids, pipelines and storage facilities, in order to allow it to proceed to market design, identify bottlenecks, codify capacities and agree on algorithms for grid availability that would ensure fully transparent market conditions

Or. en

Justification

It is not sufficient to be informed about trade data if there is no knowledge about the grid reality. Without information related to the capacity of facilities for production, storage, consumption or transmission, the Agency will be unable to detect trading based on inside information and market manipulation.

Amendment 56
Ondřej Kovařík

Proposal for a regulation
Article 1 – paragraph 1 – point 10
Regulation (EU) No 1227/2011
Article 9 – paragraph 1

Text proposed by the Commission

Amendment

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**

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 register with the national regulatory authority **in a Member**

active and register with the national regulatory authority **of that** Member State.;

State **in which they are active**.

Or. en

Justification

This is to align with the provisions of MiFID regarding third country market participants. The aim is to ensure that liquidity remains within particularly the EU spot markets, which are not excluded from this regulation, unlike derivatives as outlined in the corresponding amendment to Article 1. The aim is to ensure that we have a harmonised approach when it comes to both derivative markets and spot markets, and to ensure that we are not creating incentives for third country providers of energy, particularly LNG, to abandon the EU energy market.

Amendment 57

Philippe Lamberts

on behalf of the Verts/ALE Group

Proposal for a regulation

Article 1 – paragraph 1 – point 11

Regulation (EU) No 1227/2011

Article 9a – paragraph 3a (new)

Text proposed by the Commission

Amendment

3a. Where ACER finds that an RRM has committed one of the infringements of requirements provided for in paragraphs 1 to 3 of this Article, it shall take one or more of the following actions: (a) adopt a decision requiring the person to bring the infringement to an end; (b) adopt a decision imposing fines with a maximum amount of EUR 200 000 or the corresponding value in the national currency in the Member States whose currency is not the euro; (c) issue public notices.

Or. en

Amendment 58

Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 14 – point b
Regulation (EU) No 1227/2011
Article 13 – paragraph 4 – point (d a) (new)

Text proposed by the Commission

Amendment

(da) acts are being or have been carried out on wholesale energy products, which in the assessment of the Agency, are likely to have or have had a significant detrimental impact on the functioning of the internal energy market.

Or. en

Justification

ACER should always have the capacity to exercise its powers where there is evidence of detrimental impact on the functioning of the internal energy market.

Amendment 59
Jonás Fernández

Proposal for a regulation
Article 1 – paragraph 1 – point 14 – point b
Regulation (EU) No 1227/2011
Article 13 – paragraph 7

Text proposed by the Commission

Amendment

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.;

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 **shall** recommend certain follow-up to the relevant national regulatory authorities, and, where necessary, inform the Commission.;

Justification

ACER should be required to recommend follow-up actions.

Amendment 60

Danuta Maria Hübner

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13a – paragraph 1

Text proposed by the Commission

1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned.

Amendment

1. The Agency shall prepare and conduct on-site inspections in close cooperation with the relevant authorities of the Member State concerned ***and, where it deems it necessary, with ESMA.***

Or. en

Amendment 61

Jonás Fernández

Proposal for a regulation

Article 1 – paragraph 1 – point 15

Regulation (EU) No 1227/2011

Article 13a – paragraph 4

Text proposed by the Commission

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.***

Amendment

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.

Or. en

Justification

National authorities should not have a veto over potential inspections/investigations by ACER.

Amendment 62 **Jonás Fernández**

Proposal for a regulation
Article 1 – paragraph 1 – point 16
Regulation (EU) No 1227/2011
Article 15 – paragraph 1

Text proposed by the Commission

Any person professionally arranging or executing transactions in wholesale energy products who reasonably suspects that an order to trade or a transaction, including any cancellation or modification thereof, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay.

Amendment

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, ***whether placed or executed on or outside a trading venue***, might breach Article 3, 4 or 5 shall notify the Agency and the relevant national regulatory authority without further delay, ***and no later than four weeks from the occurrence of the breach.***

Or. en

Justification

Alignment with Regulation 596/2014 (MAR) - article 16.

Amendment 63 **Jonás Fernández**

Proposal for a regulation
Article 1 – paragraph 1 – point 16
Regulation (EU) No 1227/2011
Article 15 – paragraph 2 – introductory part

Text proposed by the Commission

Persons professionally arranging or executing transactions in wholesale energy

Amendment

Any persons professionally arranging or executing transactions in wholesale energy

products shall establish and maintain effective arrangements and procedures to:

products shall establish and maintain effective arrangements, **systems** and procedures to:

Or. en

Justification

Alignment with Regulation 596/2014 (MAR) - article 16.

Amendment 64
Jonás Fernández

Proposal for a regulation
Article 1 – paragraph 1 – point 16
Regulation (EU) No 1227/2011
Article 15 – paragraph 2 – point b a (new)

Text proposed by the Commission

Amendment

(ba) prevent, detect and report suspicious orders and transactions;

Or. en

Justification

Alignment with Regulation 596/2014 (MAR) - article 16.

Amendment 65
Philippe Lamberts
on behalf of the Verts/ALE Group

Proposal for a regulation
Article 1 – paragraph 1 – point 7 a (new)
Regulation (EU) No 1227/2011
Article 7– paragraph 3 –subparagraph 1

Present Text

Amendment

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such

(7 a) In Article 7(3), subparagraph 1 is replaced by the following:

“3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess the

reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009”.

operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. ***It shall also assess the potential build up of asset bubbles in wholesale energy markets.*** It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009”.

Or. en