ELETTRICITÀ FUTURA
imprese elettriche italiane

REMIT Review
Pain point and proposals

Elettricità Futura's comments and amendment proposals

3/5/2023

1) Scope of the Regulation

where: Art 1(2)
what: [a] Second paragraph is amended as follows: *"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."*
why: The proposed amendment to Article 1.2. deletes the provision mentioning that Articles 3 and 5 of the REMIT Regulation do not apply to wholesale energy products that are financial instruments subject to the MAR Regulation. This would likely create a legislative overlap between the MAR and REMIT regulation. We can indeed understand that NRAs and FCAs will be both competent for the supervision and enforcement of market abuse with regards to wholesale energy products which are financial products under MiFID II. In any case, we do not understand the scope and objective of such an amendment that would create an unclear legal situation/ framework for both market participants and regulatory authorities.
proposal: We propose to come back to the initial wording as follows:

Commission proposal (consolidated text):	
"2. This Regulation applies to trading in wholesale energy products. This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation."	***"2. This Regulation applies to trading in wholesale energy products. 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. This Regulation is without prejudice to Directives 2003/6/EC and 2004/39/EC as well as to the application of European competition law to the practices covered by this Regulation. ~~This Regulation is without prejudice to the application of Directive (EU) 2014/65, Regulation (EU) 600/2014 and Regulation (EU) 648/2012 as regards activities involving financial instruments as defined under Article 4(1)(15) of Directive (EU) 2014/65 as well as to the application of European competition law to the practices covered by this Regulation."~~***

2) Definition of wholesale energy products

where: Art 2(4) [also in other point of the revised Regulation]

what: 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****;"*

why: the reference to potential delivery is a sensitive point that needs to be better explained because it could create unjustified burdens and complexities.

Wholesale Energy Products definition is the constitutive element of REMIT and a change like the one proposed could create issues with every aspect of REMIT.

The reference to potential delivery in the Union could create issues with reporting obligations, inside information management, registration but also monitoring because it could create uncertainty on activities boundaries. At the same time, it could impose to European Market Participant an unproportionate burden as European Market Participant could be required to perform REMIT tasks (Registration, Inside Information Management, Reporting) also with reference to geographical markets other than EU.

proposal: we suggest to don't address the proposed changes in REMIT article 2(4) otherwise to tackle specific issues (e.g., market-coupling in power markets) avoiding unproportionate side effects.

Further we would like to reiterate our proposal to exclude from the framework of Wholesale Energy Products contracts for the supply and distribution of electricity or natural gas for the use of final customers as it is also an unproportionate burden as, with the exception of final customers that simultaneously are power producers (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 big energy consumers benefit from increasing transparency gained through REMIT, their information might not be relevant/have a significant price effect on markets.

So, the definition of 'wholesale energy products' in Art. 2.4 should be modify as suggested below:

Commission proposal (consolidated text): *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;*** *b. derivatives relating to electricity or natural gas produced, traded or delivered in the Union;* *c. contracts relating to the transportation of electricity or natural gas in the Union;* *d. derivatives relating to the transportation of electricity or natural gas in the Union.* Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products".	*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;***~~ *b. derivatives relating to electricity or natural gas produced, traded or delivered in the Union;* *c. contracts relating to the transportation of electricity or natural gas in the Union;* *d. derivatives relating to the transportation of electricity or natural gas in the Union.* Contracts for the supply and distribution of electricity or natural gas for the use of final customers **that are also wholesale energy products producers** are ~~not~~ wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to **other** final customers~~ with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as~~ **are not** wholesale energy products".

3) Definition of Market Participant

where: Art 2

what: *"(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;"*

*"****(8a) 'person professionally arranging or executing transactions' means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products;"***

(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);"(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."***

why: we understand that the aim of these changes is to enlarge the definition of OMPs to any platform / broker / intermediate with any possible feature and to set up monitoring obligation coherent with the new trading technological features. Without prejudice of what stated in the following point 6), our concern is that the current wording proposal has significant side effects that could drive to unproportionate obligations to all the subjects involved. Further to that these changes are not consistent with whereas (14) of the proposed text where it is maintained the current concept of persons professionally arranging transactions enlarging it only to direct electronic access providers and shared order-book providers.

The most important side effect of the proposed wording is that it is recursive, including also every MP in the PPAET definition (and obligation) as far as it executes transactions in its own behalf (like every MP do OTC and/or on OMP). The combined effect of the three definitions includes also every MPs in the definition (and obligation) of OMPs. 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. Indeed, physical gas, power and LNG markets are very different from financial markets and are characterized by the activity of many more entities often small and acting at local level. It should bear in mind that within REMIT MPs definition is are also included energy consumers that use energy to run their business and not just for trading purposes. All these considered, it could appear clear that inclusion of a such range of parties into the definition of the requirements to have in place a "suspicious transactions and orders reporting tool" could result as discriminatory and could constitute a market barrier.

Further to that, we would like to point out that the current definition of Market Participant is missing a reference of very important players of physical markets like SSOs, LSOs and DSOs. These entities, despite they might not enter into wholesale energy product transactions, can possess information that could be REMIT Inside Information, and that under the current requirements are not obliged to disclose or publish consistently with other REMIT Inside Information. Considering this point, we propose to explicitly define SSOs, LSOs and DSOs Market Participant even if they might not enter into wholesale energy products transactions.

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

So, the definitions of 'market participant', 'PPAT', 'OMP' and '*direct electronic access'* should be modify as suggested below:

Commission proposal (consolidated text):	
"(7) 'market participant' means any person, including transmission system operators **and persons professionally arranging or executing transactions when trading on their own account**, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets";	*"(7) 'market participant' means any person, including transmission system operators***, ~~and persons professionally arranging or executing transactions when trading on their own account~~** *who enter 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****;"*
"(8a) 'person professionally arranging or executing transactions' means a person professionally engaged in the reception and transmission of orders for, or in the execution of transactions in, wholesale energy products";	***"(8a) 'person professionally arranging ~~or executing~~ transactions' means a person professionally engaged in the reception and transmission of orders for ~~or in the execution of transactions in~~ wholesale energy products, including direct electronic access providers and shared order-book providers;"***
	"(20) 'organised market place' ('OMP') means

"(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";	***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."***
"(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)";	***"(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). These direct electronic access providers are not persons professionally arranging transactions";***

4) Market Manipulation definition

where: Art 2 (2a) [also in other point of the revised Regulation]

what: *paragraph (2), point (a) is replaced by the following 'market manipulation' means: (a) entering into any transaction, issuing any order to trade or engaging in* ***any other behavior*** *relating to in wholesale energy products which*:

why: Objectives of the amendments of Article 2 (2) (a) and Article 2 (2) (a) (ii) are not clear since they bring uncertainty. The amendment of Article 2 (2) (a) includes the notion of "any other behavior" in the definition of market manipulation without explaining what this extension can cover. However, the term "behavior" is very broad and unclear which leads to a strong legal uncertainty. We can make the same comment on the notion "is likely" (art. 2.a.(ii)). The REMIT Regulation is a regulation that remains very complex to implement. It is therefore a regulation for which market participants asked for clarification, especially on the definitions.

proposal: we propose to delete the reference to any other behavior and for the concept of "likely to secure" we propose to come back to the previous expression "attempts to" as follows:

Commission proposal (consolidated text):	
2 (a) entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products which: (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or is likely to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that 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, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;	2 (a) entering into any transaction, issuing any order to trade ~~or engaging~~ ~~in any other behaviour~~ relating to wholesale energy products which: (i) gives, or attempts ~~is likely~~ to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products; (ii) secures, or attempts ~~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 attempts ~~is likely~~ to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

5) Benchmark Manipulation

where: Art 2 (2)

what: the following point (c) is added: "***(c) transmitting false or misleading information or providing false or misleading inputs in relation to a benchmark where the person who made the transmission or provided the input knew or ought to have known that it was false or misleading, or any other behavior which manipulates the calculation of a benchmark***."

why: we understand that the aim of this addition could be an alignment to market abuse definition of financial regulation but the wording needs to be adapted to the specificities of the physical energy markets and to other already existing provisions. In the context of benchmark made by recorded transactions and orders (as it is now LNG price assessment and LNG benchmark) the inclusion within market manipulation framework of misleading information in relation to a benchmark could be improper. Transactions and orders that might result misleading just because are not aligned to prevailing market conditions in a defined moment should not be considered as not genuine transactions and orders able to manipulate the benchmark. Only intentional activities to manipulate the benchmark (i.e. false input) 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 conflicting with the obligation of LNG data collection to which MPs are subjects. Indeed, as it is now accordingly to Council Regulation (EU) 2022/2576, an LNG MP has the obligation to upload every single transaction concluded, no matter if the transaction is aligned with the prevailing market conditions or could result misleading if concluded for a legitimate business purpose.

proposal: To avoid the creation of conflicting obligations on market players, the reference to 'misleading' information should be removed from article 2(2) as suggested below:

Commission proposal (consolidated text):	
"(20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy	~~***"(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";	***~~capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account";~~*** ***(20) 'organised market place' 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."***

6) Organised Market Place definition

where: Art 2 (20)
what: current definition *is replaced by the following "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"*
why: It is not clear why a new definition for OMP is needed, since there is such in Article 2(4) of Regulation (EU) 1348/2014. The proposed new definition does not clearly state that the OMP facilitate the process of bringing together of multiple third party buying and selling interests. Indeed, the objectives and scope of the definition proposed by the Commission are unclear. We may understand that the definition has been introduced to define the scope of the new obligation in article 8(2) for market places (access to order books).
However, this definition would also lead to classify as OMPs any entity/natural person executing a transaction. The carve out "but excluding purely bilateral trading where two natural persons enter into each trade on their own account" is not sufficient to exclude the activities of a single natural person executing a transaction on an exchange and as such any such person that is active executing transactions on an exchange will be classified as an OMP.
In addition, in this new version the definitions for "energy exchange", "energy capacity platform", "energy broker", "shared order book providers" would be needed.
Proposal: we propose as a best option to replace this definition by the definition already existing in the REMIT Implementing Regulation no 1348/2014 as follow:

Commission proposal (consolidated text): ***"(20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account";***	***~~"(20) 'organised market place' ('OMP') means an energy exchange, an energy broker, an energy capacity platform or any other person professionally arranging or executing transactions, including shared order book providers but excluding purely bilateral trading where two natural persons enter into each trade on their own account";~~*** ***(20) 'organised market place' 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."

7) LNG Market Data Reporting / LNG Price Assessment and Benchmark

where: New REMIT articles 2(21), 2(22), 2(23), 2(24), 2(25), 7a, 7b,.7c, 7d and new Commission Implementing Regulation art 7a

what: stabilization in the REMIT of temporary measures related to LNG data collection / LNG price assessment / LNG benchmark originally foreseen by Council Regulation (EU) 2022/2576 on "*Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders*".
why: As far as REMIT has not the scope to tackle the flare-up of the energy crisis as it is for Council Regulation (EU) 2022/2576, LNG data collection / LNG price assessment / LNG benchmark should be stabilized in REMIT for the sole purpose of market integrity and transparency. It means that LNG price assessment and LNG benchmark should be left within the framework of application of Council Regulation (EU) 2022/2576 while LNG data collection could, if deemed necessary, be permanently included into REMIT framework. At this regard, it seems to us that the current proposal doesn't fit for the purpose as it doesn't achieve the integration between the two data reporting obligation but still keep a segregation. The missing integration of LNG data collection within REMIT data reporting procedures drives to inefficiencies like the duplication of reporting obligation and data collection platforms. It should be also noted that the current LNG data collection as for Council Regulation (EU) 2022/2576 has many technical difficulties (manual fulfillment, limited access, no automation...) that could be addressed with the integration with a more advanced and adequate system like REMIT data reporting is. For these reasons we propose to delete from REMIT revision articles 2(23), 2(24) and from 7a to 7d as for article 7a from Commission Implementing Regulation revision. A new article should be formulated to include the LNG data collection into REMIT framework leaving the definition of technical reporting parameters to amendments to Commission Implementing Regulation (EU) No 1348/2014 taking into account the following principles:
(i) The integration of LNG data collection in REMIT should be performed applying the same general rules (e.g. timeline of reporting T+1 / T+30) and technological features already applicable for REMIT data reporting. Until the task of publication of LNG price assessment and LNG benchmark will stand on ACER, the real time communication of LNG data should be limited only to those spot transaction records really used for price assessment calculation.
(ii) LNG data collection should be performed in the same format of REMIT data reporting. For this reason, we propose to integrate REMIT data reporting with a specific "commodity" LNG and new fields related to incoterms (FOB/DES) and vessel ID. In our opinion these few additions would allow the current REMIT data reporting templates to fit for the purposes also of LNG data collection.
Proposal: In line with the above, we propose the following interventions:

- **Amending the relevant definitions** in the proposal Art. 1.2j (points 21, 22, 24, 25 + add a new 26) as indicated below.
- In proposal Art. 1.7, **amending 7a.**
- In proposal Art. 1.7, **fully deleting 7b and 7c**.
- **Amending proposal Art. 3.1** (corresponding to Art. 7a in Implementing Regulation (EU) No 1348/2014).

Commission proposal (consolidated text):	
(21) 'LNG trading' means bids, offers or transactions for the purchase or sale of LNG: (a) that specify delivery in the Union; (b) that result in delivery in the Union; or (c) in which one counterparty re-gasifies the LNG at a terminal in the Union. **(22) 'LNG market data' means records of bids, offers or transactions for LNG trading with corresponding information as specified in the Commission Implementing Regulation (EU) No 1348/2014.**	**(21) 'LNG trading' means ~~bids, offers or~~ entering into any transactions, including orders to trade, relating to 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.** **(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**

(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. **(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."**	**information as specified in the Commission Implementing Regulation (EU) No 1348/2014.** **(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.** **(25) 'LNG benchmark' means 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 Futures front-month contract established by ICE Endex Markets B.V. on a daily basis.~~"**
Articles 7a **1. As a matter of urgency, ACER shall produce and publish a daily LNG price assessment starting no later than 13 January 2023. For the purpose of the LNG price assessment, ACER shall systematically collect and process LNG market data on transactions. The price assessment shall where appropriate take into account regional differences and market conditions.** **2. No later than 31 March 2023, ACER shall produce and publish a daily LNG benchmark determined by the spread between the daily LNG price assessment and the settlement price for the TTF Gas Futures front-month contract established by ICE Endex Markets B.V. on a daily basis. For the purposes of the LNG benchmark, ACER shall systematically collect and process all LNG market data.** **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.**	**Articles 7a** **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.** **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.~~ For the purposes of the first subparagraph, ACER may make use of the services of a third party.** **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 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. **~~53~~. 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.**
Articles 7b and 7c [et all] […]	*Full deletion*
Commission Implementing Regulation (EU) No 1348/2014 - Article 7a "1. LNG market data shall include: (a) the parties to the contract, including buy/sell indicator; (b) the reporting party; (c) the transaction price; (d) the contract quantities; (e) the value of the contract; (f) the arrival window for the LNG cargo; (g) the terms of delivery; (h) the delivery points; (i) the timestamp information on all of the following: (i) the date and time of placing the bid or offer; (ii) the transaction date and time; (iii) the date and time of reporting of the bid, offer or transaction; (iv) the receipt of LNG market data by ACER. 2. LNG market participants shall provide ACER with LNG market data in the following units and currencies: (a) transaction, bid and offer unit prices shall be reported in the currency specified in the contract and in EUR/MWh and shall include applied conversion and exchange rates if applicable; (b) contract quantities shall be reported in the units specified in the contracts and in MWh; (c) arrival windows shall be reported in terms of delivery dates expressed in UTC format;	"1. For the purpose of LNG market data collection, the following data field should be included to the Annex of this Commission Implementing regulation ~~shall include~~: (a) the indication if the record is reffered to LNG commodty or to gas commodity~~the parties to the contract, including buy/sell indicator~~; (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:~~ ~~(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;~~

(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.”.	~~(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.”.~~

8) Definition of Inside Information

where: Art. 2 (1) 3rd sub-para

what: Art. 2 (1) the third subparagraph is replaced by the following: “*Information shall be deemed to be of a precise nature if it indicates a set of circumstances which exists or may reasonably be expected to come into existence, or an event which has occurred or may reasonably be expected to 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.***

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 purposes of paragraph 1, information which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products shall mean information a reasonable ***investor*** *would be likely to use as part of the basis of his or her* ***investment*** *decision(s)*”;
why: We understand that the aim of these changes is to align the definition of inside information to mirror Regulation (EU) 596/2014. However, we believe that the specificities of physical energy markets should be taken into account. In particular, when the so-called protracted process relates to physical assets they could be very extended and articulate. For these reasons the disclosure of these preliminary information could mislead market participants, rather than contribute to efficient price formation and address the information asymmetry as it is the target of inside information disclosure.
Qualification of inside information is a cornerstone of REMIT, and therefore it is of the utmost importance to reach a definition which is unambiguous and implementable by market actors.
This paragraph of Article 2 (1) also introduces the idea that must be published any information that a Market Participant (we would also highlight the misuse of the term "investor” that is totally unrelated with the REMIT Regulation) could use to ground a trading decision (also for the used term “investment decision” we would point out its totally inconsistency with the REMIT perimeter). This amendment adds uncertainty to the already existing uncertainty regarding a very complex regulation that is already largely subject to interpretation. One might understand from this paragraph that a reasonable Market Participant could use information from the business plans and strategies of other Market Participants. However, in accordance with the provisions of recital 12 of the current REMIT regulation, business plans and strategies are not inside information. In addition, this amendment could lead to think that to qualify an information as inside information it is no more necessary to meet the fourth criterion for inside information, which is the significant impact on wholesale markets criteria (article 2(1)).
Proposal: For this reason, we recommend deleting the last paragraph of Article 2 (1) as follow:

Commission proposal (consolidated text): ***"2 (1) 3rd sub-para "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."***	***"2 (1) 3rd sub-para "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.~~"***

9) Definition of Inside Information

where: Art. 2 (1) 4th sub-para

what: the definition of European or national regulatory thresholds for the identification of inside information is the only viable solution in order to allow MPs arrange internal systems for the immediate detection and disclosure of inside information. As a matter of fact, energy MPs may hold large amount of potential inside information on a daily basis (in the form of unavailability of installations): the only, reliable, way to quickly identify inside information, and so timely and properly treat and publish it, is the existence of a pre-arranged mechanism for the detection of information valuable to be shared with the market. This calls for the existence of thresholds, which in our understanding might be defined by ACER or otherwise by national regulatory authorities, together with OMP/NEMOs, who have ultimately the overall view of markets as well as the necessary IT tools (e.g. day-ahead market simulation facilities).

Proposal: For the reasons above, we recommend adding a new fourth subparagraph of Article 2(1), with the following wording

Commission proposal (consolidated text): New	***"Mandate is given to ACER to define - in close cooperation with National Regulatory Authorities - thresholds for the identification of events which, if made public, would be likely to significantly affect the prices of those wholesale energy products. Said threshold may be set at either national or EU level and shall encompass both electricity and gas markets"***

10) Publication of inside information

where: Art 4 (b)

what: [b] paragraph 4 is replaced by the following: *"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****."*

why: we appreciate what has been introduced in relation to the timeliness of the publication of information for the purposes of transparency regulation, as we believe that, what has been proposed, can increase transparency on the energy markets.
On the other hand, we believe it is necessary to provide for greater clarity in the publication obligations related to the facilities and infrastructures operated by LSOs, SSOs and TSOs
Proposal: we propose to modify Art 4.1 in the following way:

Commission proposal (consolidated text): ***"The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes, complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article"***	***"The publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes, complete and effective public disclosure but not necessarily disclosure in a timely manner in the meaning of paragraph 1 of this Article. Market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Transmission, Distribution, Storage and LNG System operators even if they are not entering into any transaction in one or more wholesale energy markets are responsible for the publication of inside information related to facilities they own or controls or for whose operational matters are responsible or their undertakings are responsible, either in whole or in part. Such disclosure shall include information relevant 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."***

11) Inside Information Platforms Liabilities

where: Art 2 (17) and Art 10 (1) Commission Implementing Regulation (EU) No 1348/2014

what: the following point 17 is inserted: "***'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.***"

why: we agree that inside information to be managed by IIPs are owned by MPs but we claim that with the proposed wording MPs remain liable of tasks and responsibilities that are of competence of IIPs as the publication of the information (received by the MP) and its reporting to ACER. As far as MPs do not have any leverage over IIPs, the responsibility for the publication and transmission of data to ACER must lie with the IIPs themselves. MPs should be responsible and liable only for sending their data to IIPs. Therefore, MPs should be explicitly discharged from any liabilities when they are able to demonstrate that information have been correctly submitted to IIP for its publication.

Proposal: We suggest to amend Art 2(17) as follows:

Commission proposal (consolidated text): ***"(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."***	***"(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~~."***

Moreover, a better clarification of the market participant discharge of responsibility once they have properly and correctly submitted the inside information to the IIP would be reached by adding a recital 11bis as follows:

Commission proposal (consolidated text): New	***"Market participants should not be held responsible for temporary technical problems of duly registered and authorized IIPs. Therefore, provided that the information was transmitted to the platform timely and in line with the format requested, the market participant should be discharged from any liabilities related to the obligation to disclose inside information and the prohibition of insider trading."***

"– as well as by adding a paragraph 4bis in article 4a:

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

Finally, as a second best solution, market participants should continue to be allowed to use companies' websites as additional channel for publication, through the following amendments

Amendment of recital 11:

Commission proposal (consolidated text): ***"Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency. To ensure trust in the IIPs they should be authorised and registered."***	***"Inside Information Platforms (IIPs) should play an important role for the effective and timely publication of inside information. It should be mandatory to disclose inside information on dedicated IIPs to make the information easily accessible and enhance transparency, while use of own company websites by market participants should only be allowed in addition to the publication on IIPs. To ensure trust in the IIPs they should be authorised and registered."***

Article 4 (1) 2nd subparagraph is amended as follows:

Commission proposal (consolidated text): ***"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."***	***"Market participants shall disclose the inside information through IIPs. The IIPs shall ensure that the inside information is made public in a manner which enables fast access, including access through a clear application programming interface. and complete, correct and timely assessment of the information by the public. The use of other channels (including market participants' own websites) shall be allowed as an additional source for disclosure of inside information, provided that equal conditions on timeliness and accessibility as IIP are ensured"***

12) ACER Authorization and Supervision of IIPs and RRMs

where: Art 4a (2)(3)(4)
what: for point (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 is technically possible, on a reasonable commercial basis*" for point (3) the introduction of a list of information required and for point (4) for the failure to provide for the exemption from liability for the market operator who has complied with the obligation to publish privileged information
why: Market participants cannot be held responsible for delayed or erroneous publications caused by IIPs because they have no control over it. To avoid such situations, the IIP certification should include performance obligations, such as a maximum display time to the market and maximum time feedback returns, to be defined in the implementing acts. According to the proposal of the EC, Market participants shall disclose the inside information through IIPs. Such context raises significant concerns on the sharing of responsibility between MP and IIPs. However, if the new article 4a specifies the authorization and the supervision of the obligations imposed on IIPs, it does not include any provisions on the respective responsibilities of IIPs and market participants. Based on the Guidance on REMIT application issued by ACER, we propose to clarify that market participants are not responsible for technical problems of the IIP. If the information was transmitted to the platform in time and there were technical problems, the market participant should therefore not be considered for having breached the obligation to disclose inside information. In addition, Market participant can't be hold responsible for any publication error caused by the IIP. Finally in the provision of point (3) are required information that should be part of the IA and not inserted in first level of the REMIT Regulation for the described details that are so specific that any changes could require a review of the Regulation
proposal: We propose to amend Art 4a (2)(3)(4) as follows:

Commission proposal (consolidated text): ***"(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."***	***"(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 possible and under a maximum display time to the market defined by mean of implementing act. ~~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:	~~***"(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;	~~***(a) the message ID and event status;***~~
(b) the publication date, the time and the start and stop of the event;	~~***(b) the publication date, the time and the start and stop of the event;***~~
(c) the market participant name and the market participant identification;	~~***(c) the market participant name and the market participant identification;***~~
(d) the bidding or balancing zone concerned;	~~***(d) the bidding or balancing zone concerned;***~~
(e) and, where applicable:	~~***(e) and, where applicable:***~~
(a) the type of unavailability and the type of event;	~~***(a) the type of unavailability and the type of event;***~~
(b) the unit of measurement;	~~***(b) the unit of measurement;***~~
(c) the unavailable, the available and the installed or technical capacity;	~~***(c) the unavailable, the available and the installed or technical capacity;***~~
(d) the reason for the unavailability;	~~***(d) the reason for the unavailability;***~~
(e) the fuel type;	~~***(e) the fuel type;***~~
(f) the affected asset or unit and its identification code."	~~***(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 information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.	***"(4) An IIP shall operate and maintain effective administrative arrangements designed to prevent conflicts of interest with its clients. In particular, an IIP who is also a market operator or market participant shall treat all inside information collected in a non-discriminatory way and shall operate and maintain appropriate arrangements to separate different business functions.***
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.	***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."	***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.*** ***In any case the Market Participant cannot be held responsible for any publication error or delay caused by the IIP"***

We also propose to introduce the deleted provisions of 4a (3) it in Art 10 (2) of the Implementing Regulation as follows:

"2. When reporting information referred to in Articles 6, 8 and 9 including inside information, the market participant shall identify itself or shall be identified by the third	***"2. When reporting information referred to in Articles 6, 8 and 9 including inside information, the market participant shall identify itself or shall be identified by the third party reporting on its behalf***

party reporting on its behalf using the ACER registration code which the market participant received or the unique market participant code which the market participant provided while registering in accordance with Article 9 of Regulation (EU) No 1227/2011."	***using the ACER registration code which the market participant received or the unique market participant code which the market participant provided while registering in accordance with Article 9 of Regulation (EU) No 1227/2011.*** ***The inside information made public by an IIP in accordance with paragraph 2 of Article 4a of Regulation (EU) No 1227/2011 shall include, at least, the following details depending on the type of inside information:*** ***(a) the message ID and event status;*** ***(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."***

13) ACER Authorization and Supervision of IIPs and RRMs

where: Art 4a (5) and Art 9a (4)

what: Art 4a (5) "***The Agency may withdraw the registration of an IIP where the latter: […] The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP."***

Art 9a (4) "***The Agency may withdraw the authorization of an RRM where RRM: […]. An RRM whose authorization 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 authority in the Member State where the RRM is established of a decision to withdraw the authorization of an RRM.***"

why: We support the introduction of these provisions as we believe that also IIPs and RRMs should be subject to supervision. However, we deem it necessary to include also contingency provisions in order to avoid disruptions at the entry into force of this amended regulation as far as the moment of the withdrawal of an existing authorization.

On MPs side the withdrawal of authorization to IIPs/RRMs could be critical. The majority of active MPs have in place technological exchange protocols with the IIPs/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 an IIPs/RRM that have active clients need to include also contingency that safeguards MPs that use the services of affected IIP/RRM. Where the authorization would be withdrawn to RRMs/IIPs with clients, we would propose to timely inform them (and not only the National competent authority) and give clients a reasonable period of time for the switch of communication flows to another IIP/RRM. In fact, even if the proposed text points out that when a registration has been withdrawn, the RRM/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 MPs' side are orderly performed without generating disruptions that, in particular for what concerns the management of inside information, may be very significant.
proposal: Therefore, Art. 4a, paragraphs (5), and 9a, paragraphs (4) should be emended as follows:

Commission proposal (consolidated text): *5.* ***The Agency may withdraw the registration of an IIP where the latter: […]. The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established of a decision to withdraw the registration of an IIP.***	*5.* ***The Agency may withdraw the registration of an IIP where the latter: […]. The Agency shall, without undue delay, notify the national competent authority in the Member State where the IIP is established and all IIP's users of a decision to withdraw the registration of an IIP not later than three months before the entry into force of the decision of withdrawal."***
Commission proposal (consolidated text): *4.* ***The Agency may withdraw the authorisation of an RRM where RRM: […]. 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 authority in the Member State where the RRM is established of a decision to withdraw the authorization of an RRM."***	*4.* ***The Agency may withdraw the authorisation of an RRM where RRM: […]. 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 authority in the Member State where the RRM is established and all RRM's users of a decision to withdraw the authorisation of an RRM not later than three months before the entry into force of the decision of withdrawal."***

14) ACER's new complementary powers to investigate and to enforce potential breaches of REMIT

where: from Art 13 to Art 13d

what: Introduction of new powers for ACER. REMIT is amended so that ACER can carry out investigations in cooperation with the National Regulatory Authorities with the purpose of supporting and complementing their enforcement activities. Upon completion of the investigation, ACER could only draw up a report to National Regulatory Authorities of the Member State and it may recommend certain follow-ups.
why: We believe that the introduction of new enforcement powers (on-site inspection and control) to ACER cannot be considered a proportionate choice. We support the additional powers given to ACER, as it is certainly the entity that has the better insight of markets, often being the first one entering in contact with a violation thanks to REMIT reporting data collection. However, those supervision and inspection powers should be conducted by ACER only in collaboration with NRAs and through NRAs' structures already well in place. As a possible parallelism, it should be noted that also ESMA has sanctions and enforcement powers only on those entities where it is a single supervisor like Trade Repositories and Credit Rating Agencies.
Considering the proposed new REMIT procedure, ACER after its inspection would give the open case to NRAs, NRAs could "accept" ACER's conclusions or could consider appropriate to open a new investigation before to adopt and implement a decision/sanction. This potential duplication may create an extra-extension to investigation processes, generating significant inefficiency both on NRAs and MPs sides with an excessive bureaucratization and unjustified extension of time and resources needed to manage the cases. As from the preliminary data at disposal, and without taking into account the indirect costs that this proceeding way, these new ACER's tasks will drive at least to a duplication of the cost that the energy sector already bears for ACER through REMIT fees.

proposal: Therefore, we suggest amending proposal Art. 1.15 as shown below:

Commission proposal (consolidated text):	

[15] the following Articles 13a and 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.*** *[…]* ***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.*** *[…]* ***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, including:*** *[…]* ***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.***	**[15] the following Articles 13a and 13d are inserted:** ***Article 13a*** ***On-site inspections by the Agency*** ***1. The Agency shall prepare and conduct on-site inspections on inside information platforms, registered reporting mechanisms and persons professionally arranging transactions in close cooperation with the relevant authorities of the Member State concerned.*** *[…]* ***Article 13b*** ***Request for information*** ***1. At the Agency's request any ~~person~~ inside information platform, registered reporting mechanism and persons professionally arranging transaction shall provide to it the information necessary for the purpose of fulfilling the Agency's obligations under this Regulation.*** *[…]* ***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~~ inside information platforms, registered reporting mechanisms and persons professionally arranging transactions, including:*** *[…]* ***2. The Agency shall seek evidence for and against the ~~market participant~~ inside information platform, registered reporting mechanism and person professionally arranging transactions, and carry out on-site inspections and request information objectively and impartially and in accordance with the principle of the presumption of innocence.***

15) Declaration of Office for 3rd Country Office

where: Art 9

what: paragraph 1 is replaced by the following: "*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 established in a third country to the Union shall **declare an office**, in a Member State in which they are active and register with the national regulatory authority of that Member State."*

why: the request to have an office in the EU is an unjustified market barrier for MPs not established in EU and 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 and also Directive 2014/65/EU don't foresee any comparable requirement for trading on own account activities. Moreover, it should be taken into account that for a non-EU based MP to establish an office in EU would have a negative impact also on its tax calculation, making the access to EU markets further less profitable.

proposal: We propose to amend article 9 as follows:

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

16) Definition of Organized Market Places (OMPs) and OMP Reporting

where: Art. 8(1a)

what: the following paragraph 1a is inserted:
"(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 make available to the Agency data relating to the order book or, upon the Agency's request, give the Agency access to the order book so that it is able to monitor trading***.".
why: We support the proposal to that OMPs should make available to ACER also data related to order book but, in order to avoid inefficiencies and to clarify REMIT data reporting responsibilities, we suggest to include also transactions concluded on OMPs avoiding possible data quality issues related to the reporting of orders and transactions made by different entities.
proposal: we propose the rewording of point 8(1a) as follows:

Commission proposal (consolidated text): ***""(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 make available to the Agency data relating to the order book or, upon the Agency's request, give the Agency access to the order book so that it is able to monitor trading.";***	***""(1a) For the purpose of reporting records of transactions, including orders to trade, entered, concluded or executed at organised market places shall made be available to the Agency by the organized market places; those market places shall make available to the Agency data relating to the order book or, upon the Agency's request, give the Agency access to the order book so that it is able to monitor trading.";***

17) Guidelines and Recommendations

where: Art 16b (1) (2)

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

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"

why: we support that ACER should be entitled to issue guidelines and recommendations, but we believe that, in order to obtain a strengthen harmonization of EU provisions, this possibility should be granted to ACER aways *erga omnes* and also with reference to REMIT article 4 (Obligation to publish inside information) and article 9 (Registration of market participants). In developing process of guidelines and recommendations we also consider of primary relevance the chance to collect from Market Participants their view on the proposed changes

With special reference to inside information publication, we also believe that ACER should be entitled to define thresholds for identification of Inside Information in order to improve market transparency across EU.

proposal: thus, we propose to modify Art 16b (1) and (2) in the following way:

Commission proposal (consolidated text):	
"1. The Agency shall, with a view to establish consistent, efficient and effective supervisory practices within the Union, and to ensure the common, uniform and consistent application of Union law, issue guidelines and recommendations addressed to all national regulatory authorities or all market participants and issue recommendations to one or more national regulatory authorities or to one or more market participants on the application of Articles 4a, 8 and 9a.	***"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~~ included recommendations on the application of Articles 4a, 8 and 9a.***
2. The Agency shall, where appropriate, conduct public consultations regarding the guidelines and recommendations which it issues and analyse the related potential costs and benefits of issuing such guidelines and recommendations. Those consultations and analyses shall be proportionate to the scope, nature and impact of the guidelines or recommendations."	***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."***

18) Sanctions

where: Art 18.2 (d) and (e i. ii. Iii.)

what: for the point (d) the provision of "*adopt a decision imposing periodic penalty payments*"; for point (e) the provision of sanctions based on a turnover percentage or the introduction of sanctions for natural person breaching the provisions of art. 8 and 9

why: for the point (d) being a periodic penalty, a sum imposed to provide an incentive for undertakings to comply with a decision in a timely manner and distinguishing periodic penalties from fines being the later imposed to punish past violations, while the former is designed to prevent future offences we consider the proposal not an appropriate measure considering the regulation perimeter. For point (e) we propose to define the level of the sanctions using a criterion of proportionality with respect to what was committed and for natural person involved in breaches of art. 8 and 9 we don't consider appropriate to introduce any kind of sanctions being the case for example of an employee of a MP that doesn't proceed with the inside information publication

proposal: we propose to amend art. 18 2 (d) and (e i. ii. Iii.) and art. 8 and 9 as follows:

Commission proposal (consolidated text):	
"(d) adopt a decision imposing periodic penalty payments;"	***~~"(d) adopt a decision imposing periodic penalty payments;"~~***

"(e) adopt a decision imposing administrative pecuniary sanctions; ***in respect of legal persons, maximum administrative pecuniary sanctions of at least:*** ***i. for breaches of Articles 3 and 5, 15% of the total turnover in the preceding business year;*** ***ii. for breaches of Article 4 and 15, 2% of the total turnover in the preceding business year;*** ***iii. for breaches of Article 8 and 9, 1% of the total turnover in the preceding business year.*** ***in respect of natural persons, maximum administrative pecuniary sanctions of at least:*** ***i. for breaches of Articles 3 and 5, EUR 5 000 000;*** ***ii. for breaches of Article 4 and 15, EUR 1 000 000;*** ***iii. for breaches of Article 8 and 9, EUR 500 000."***	***"(e) adopt a decision imposing administrative pecuniary sanctions;*** ***in respect of legal persons, maximum administrative pecuniary sanctions of at least:*** ***i. for breaches of Articles 3 and 5, up to ten times the profits gained or losses avoided due to the breaches ~~15% of the total turnover in the preceding business year~~;*** ***ii. for breaches of Article 4 and 15, up to five times the profits gained or losses avoided due to the breaches~~2% of the total turnover in the preceding business year~~;*** ***iii. for breaches of Article 8 and 9, up to 50.000€~~1% of the total turnover in the preceding business year~~.*** ***~~in respect of natural persons, maximum administrative pecuniary sanctions of at least:~~*** ***~~i. for breaches of Articles 3 and 5, EUR 5 000 000;~~*** ***~~ii. for breaches of Article 4 and 15, EUR 1 000 000;~~*** ***~~iii. for breaches of Article 8 and 9, EUR 500 000."~~***

19) Amendments to Regulation (EU) 2019/942

where: Article 32, paragraph 1

what: The collection of inside information by ACER should be excluded from the REMIT fee regime because otherwise this will have detrimental effect on the market transparency.

why: The information disclosed in the UMMs is already reported via other means, and as such, to respect the principle or reducing costs for Market Participants and avoid double payments, the information disclosed as UMMs should not be subject to fees. The disclosure of inside information is made and meant for the use by the market. The inside information provision, via special channel to ACER is an auxiliary process – facilitating ACER and ACER's ex-post monitoring and surveillance activities.

Taking into account that the collection of the disclosed inside information is to ease the work of ACER and the NRAs, and considering that by nature the disclosed inside information is fundamental data, the collection of inside information should be excluded from REMIT fees regime or at least should be treated as "fundamental data" in the context of the application of the REMIT fees (the individual UMM data transmissions to ACER should not be charged).

proposal: we suggest to amend article 32(1) as follows:

Commission proposal (consolidated text): ***"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***	***"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~~.".***

to Articles 13, 13a, 13b and Article 16 Regulation (EU) No 1227/2011.".	

20) Entering into Force and Application

where: Art 4 of "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" and new REMIT articles 4a and 9

what: the following sentence is added: "***This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of European Union***."

why: We believe that the current prevision of entering into force 20 days after publication is incompatible with some of the amendments to Regulation (EU) No 1227/2011 that requires the establishment of system and procedures as new registrations (e.g. Art 2 (2) 8a, art. 7c, art. 4a...). Further to that the newly established articles 4a and 9a don't foresee any contingency for RRM and IIPs already approved by ACER before entering into force of this regulation. The prompt entry into force of the provision as far as the lack of contingencies are not compatible with a Regulation that is already up and running and could trigger disruptions in the current REMIT framework not granting a smooth passage to the new regulatory provisions.

proposal: we suggest to amend Art 4 as follows:

Commission proposal (consolidated text):	
"This Regulation shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union."	***"This Regulation shall enter into force after six months from ~~on the twentieth day following that of~~ its publication in the Official Journal of the European Union."***

Moreover, we suggest that new registration provision included into art 4a and 9a would not be applicable to already active IIPs and RRMs as already included in the ACER lists published on the REMIT portal.

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