EUROPEAN COMMISSION

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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on energy market integrity and transparency

{SEC(2010) 1510 final}
{SEC(2010) 1511 final}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

A positive outcome of a decade of electricity and gas market liberalization has been the development of power exchanges and standardized over the counter (OTC) contracts which attract a wide range of actors including generators and suppliers, large energy users, pure traders, financial institutions and other trade facilitators.

Competitive and integrated European energy markets support innovation and efficiency. Deep and liquid wholesale gas and electricity markets give confidence to businesses that they can respond flexibly to changes in market conditions – supporting investment in new generation and infrastructure, which are needed as part of the transformation of Europe's energy supply. Prices on wholesale markets also determine energy costs for households and business.

Therefore citizens, business and authorities must have confidence in the integrity of these wholesale energy markets. Unless effectively addressed, the potential for unfair trading practice undermines public trust, deters investment, increases volatility of energy prices and may lead to higher energy prices in general.

In December 2007, the Commission requested the advice of Committee of European Securities Regulators (CESR) and the European Regulators Group for Electricity and Gas (ERGEG) on issues relating to wholesale energy market transparency and market abuse. Their response was that the Commission should consider developing and evaluating proposals for a basic tailor made market abuse framework in the energy sector legislation for all electricity and gas products not covered by the Market Abuse Directive[1]. This advice followed from their findings that the existing regime has led to gaps in the applicable rules and the level of transparency.

2. CONSULTATION OF INTERESTED PARTIES

In May 2009 the Directorate General for Energy (then DG TREN) organised a workshop to collect stakeholders' views and discuss the best way to develop a monitoring regime to ensure market integrity and transparency on energy markets. A second workshop was organised in October 2009 with wide industry participation and presented the basic building blocks of a sector specific market integrity regime.

The Directorate General for Energy presented a draft discussion paper[2] at the December 2009 European Electricity Regulatory Forum (the Florence Forum) and in January 2010 at the European Gas Regulatory Forum (the Madrid Forum). Stakeholders were asked to submit their proposals and views on the presented policy options by February 2010. A full public consultation was organised from 31 May 2010 to 23 July 2010.

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1 CESR and ERGEG advice to the European Commission in the context of the Third Energy Package, three separate documents (Ref: CESR/08-527, CESR/08-998, CESR/08-739) presented to the Commission between October 2008 and January 2009.

2 http://ec.europa.eu/energy/gas_electricity/forum_electricity_florence_en.htm

All information on the consultation process, the documents and presentations used in the stakeholder meetings have been made available on the website of DG ENER[3].

3. IMPACT ASSESSMENT

This proposal is accompanied by an Impact Assessment which examines the options for ensuring energy market integrity and transparency in detail. The Impact Assessment Report has been made available on the Commission website[4].

4. LEGAL ELEMENTS OF THE PROPOSALS

4.1. Legal basis

The proposal is based on Article 194(2) TFEU. This Article states that in the context of the establishment and functioning of the internal market Union policy on energy shall aim, *inter alia*, to ensure the functioning of the energy market and is therefore the most appropriate legal basis for a Regulation in this field.

A Regulation is the most appropriate legal instrument to establish consistent rules applying to cross border energy markets, with a European level monitoring function and coordinated enforcement across the Member States.

4.2. Subsidiarity and proportionality

4.2.1. Subsidiarity principle

The subsidiarity principle as set out in Article 3(3) of the Treaty on European Union, applies insofar as the proposal does not fall under the exclusive competence of the Union.

Wholesale energy markets are crucial to the well being of Europe's citizens, and to the competitiveness of Europe's businesses, as well as to the success of the EU's energy policy. As made clear in their advice to the Commission, financial regulators and energy regulators cannot effectively address concerns regarding market abuse because of a combination of informational failures and incomplete regulation.

EU energy markets increasingly cross national boundaries in terms of where trading takes place and where production and consumption takes place. As a result prices are set based on supply and demand in several countries[5]. Market coupling between power exchanges across EU[6], which is envisaged to be in place by 2015, will reinforce this, as will the move to hub based trading in gas along with entry/exit gas transmission tariffs.

Furthermore wholesale energy markets include organised exchanges and brokered over-the-counter (OTC) deals. OTC transactions in particular are frequently concluded outside the

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3 http://ec.europa.eu/energy/gas_electricity/consultations/2010_07_23_energy_markets_en.htm

4 http://ec.europa.eu/governance/impact/index_en.htm

5 This is supported by the high correlation between prices of neighbouring countries, for example Dutch-German electricity day ahead price correlation increased from 0.57 (2004) and 0.67 (2005) to 0.85 and 0.91 in 2008 and 2009, respectively. This is analysed in more detail in the impact assessment report.

6 Presentation to Florence Forum "Target Model for Interregional Congestion Management", 10 December 2009, http://ec.europa.eu/energy/gas_electricity/forum_electricity_florence_en.htm

country to which the trades relate. Such deals also influence trading on power exchanges. It is evident that market abuses occuring on a specific market will not be confined to a single Member State but will inevitably have impacts across the European Union, just as anti-competitive behaviour on energy markets could have an effects on trade between Member States and can affect customers across the internal market [7].

Therefore consistent rules across the internal market are needed along with a mechanism for authorities to access information from across the Union to fully understand market developments.

There are attempts at the national level to implement monitoring of energy markets[8]. Given the organisation of energy markets, it will be difficult for individual member states to access the necessary range of data to ensure that market abuse is effectively detected and deterred. Without action at the EU level these initiatives could proliferate and risk exposing market participants to conflicting and uncoordinated regimes.

Because of the cross-border nature of the problem, it is clear that EU action has a key role to play in ensuring the integrity of European energy markets. EU wide coordination can ensure that the benefits of the internal market in energy are not lost as a result of market behaviour which undermines the confidence of citizens and business in the price formation process, when the behaviour occurs in a different Member State to where its effects are felt.

The Regulation will create a framework which defines rules that are consistent and adapted to the specifics of energy markets and designed to effectively detect and deter market abuse. It foresees the Agency for the Cooperation of Energy Regulators (the Agency)[9] working closely with the national regulatory authorities established under Directive 2009/72/EC and Directive 2009/73/EC and with other competent authorities to monitor electricity, and gas markets, and to ensure that effective and coordinated enforcement action is taken.

Member State authorities not only have a direct interest in the outcomes on their markets, they also bring an important understanding of the evolution of market outcomes in their jurisdiction. Therefore respecting the subsidarity principle will be key to ensuring the effectiveness of EU action. This Regulation will facilitate a more efficient monitoring at the national level, by giving national level authorities access to comprehensive data, and also ensure that the Agency brings the appropriate Europe-wide view of electricity and gas markets, and the necessary expertise in the operation of European electricity and gas markets and systems.

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7 Inquiry into the functioning of gas and electricity markets of 2005, pursuant to Article 17 of Regulation 1/2003 EC - http://ec.europa.eu/competition/sectors/energy/inquiry/index.html#final - and Commission Decision of 28.11.2008 relating to cases COMP/39.388 – German Electricity Wholesale Market and COMP/39.389 – German Electricity Balancing Market

8 The French energy regulator (CRE) has broad powers to oversee wholesale markets (including spot and OTC derivative transactions) and has begun to request transactional data relating to French markets from market participants across Europe. The German Monopolkommission has demanded the establishment of an independent market monitor in Germany being able to access on and off-exchange transactions for delivery in Germany. In March 2009 Ofgem, the UK energy regulator issued a paper on preventing market abuse.

9 The Agency was established under Regulation (EC) No. 713/2009 of the European Council and of the parliament establishing an Agency for the Cooperation of Energy Regulators, whose legal basis was then article 95 of the Treaty. The Agency furthers the objectives of Article 194 of the Treaty. Had this Article been in force when Regulation (EC) No. 713 was adopted, it would have provided the legal basis for the establishment of the Agency.

4.2.2. Proportionality principle

In accordance with the principle of proportionality, as set out in Article 3(4) of the Treaty on European Union, the proposal does not go beyond what is necessary, in particular in its impact on those who trade in whoesale energy products, in order to achieve the intended objective of ensuring the functioing of the internal market in energy by ensuring the intergrity and transparency of wholesale energy markets.

4.3. Detailed explanation

4.3.1. Clear and consistent rules

The Regulation develops rules which clearly prohibit market abuse on wholesale markets in electricity and related products, and wholesale markets in natural gas and related products. These rules include clear prohibitions on trading on insider information, and market manipulation. These rules are formulated in such a way that they are consistent with the Market Abuse Directive, and do not apply to financial instruments which are already covered by that Directive.

As a result the gaps identified by CESR and ERGEG will be filled, with market abuse explicitly prohibited on wholesale energy markets.

4.3.2. Adaptable and compatible rules

The Regulation allows these rules to be specified in delegated acts of the Commission. Industry responses to the public consultation favoured this approach, which allows the specificities of energy markets, which are subject to change, to be taken into account. Here it is relevant that the adoption of network codes under Third Energy Liberalisation Package legislation will bring many changes to the way in which cross border markets operate. This approach will allow financial regulators to take account of such detailed regulations in the application of the Market Abuse Directive (MAD) to financial instruments related to energy.

4.3.3. Measures for effective detection and deterrence

Market monitoring

To detect market abuse an effectively functioning market monitor with timely access to complete transactional data is necessary. EU level market monitoring can take the holistic view needed for the monitoring of energy markets. The Agency for the Cooperation of Energy Regulators (the Agency) has the necessary expertise in energy markets, and institutional connections with national energy regulators for this role.

The Regulation provides for the Agency to gather, review and share data from wholesale energy markets. Member State authorities, including national regulatory authorities, financial regulators and competition authorities, have a direct interest in the market results and bring a vital understanding of the markets in their jurisdiction. Therefore cooperation between the Agency and national authorities is central to the monitoring foreseen.

Data Reporting

The Regulation requires market participants to provide the Agency with a record of their transactions in wholesale energy products. The form, content and timing of the information to

be provided will be laid down in delegated acts of the Commission. These will be based on draft guidelines developed by the Agency. These guidelines will provide for several channels for the reporting of data. This will minimise the burden on market participants and avoid double reporting obligations on entities covered by the Market Abuse Directive.

Investigation and Enforcement

Market monitoring will be accompanied by effective investigation where market abuse is suspected, where necessary leading to appropriate sanctions. The Regulation gives national regulatory authorities the lead role in this, requiring Member States to grant them the necessary powers to investigate suspected market abuse and to lay down appropriate rules on the penalties applicable in case of violations of the Regulation.

The Regulation also recognises that the cross border nature of energy markets means that cooperation will be crucial. In this ACER is given an important role. In close contact with energy regulators and financial supervisors it will ensure that a consistent approach is taken to suspected market abuse, alerting national regulatory authorities to potential market abuse and facilitating information exchange.

This coordination role will be particularly important when an investigation covers several Member States or it is unclear where the suspected market abuse actually occurred. The Regulation provides for the possibility for an investigatory group to be established, coordinated by the Agency but made up of representatives of concerned national regulatory authorities.

5. BUDGETARY IMPLICATIONS

An overview of the implication of this proposal is presented in the accompanying legislative financial statement.

2010/xxxx (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on energy market integrity and transparency

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the Commission[10],

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee[11],

Having regard to the opinion of the Committee of the Regions[12],

Acting in accordance with the ordinary legislative procedure,

Whereas:

(1) It is important to ensure that consumers can have confidence in the integrity of electricity and gas markets and that prices set on wholesale energy markets reflect a fair interplay between supply and demand.

(2) The advice of the Committee of European Securities Regulators and the European Regulators Group for Electricity and Gas confirmed that the scope of existing legislation may not properly address market integrity issues on the electricity and gas markets and recommended the consideration of an appropriate legislative framework in the energy sector, preventing market abuse.

(3) Energy markets are increasingly interlinked across the Union. Market abuse in one Member State affects wholesale prices for electricity and gas across national borders. Therefore the concern to ensure the integrity of markets cannot be a matter only for individual Member States.

(4) Wholesale energy markets encompass both commodity markets and derivative markets, with price formation in both sectors interlinked.

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10 OJ C , , p. .
11 OJ C , , p. .
12 OJ C , , p. .

(5) To date energy market monitoring practices have been Member State and sector specific. Depending on the overall market framework and regulatory situation, this can result in trading activities being subject to multiple jurisdictions with monitoring carried out by several different authorities, possibly located in different Member States. This can result in a lack of clarity as to where responsibility rests and even to a situation where no such monitoring exists.

(6) Behaviour which undermines the integrity of the energy market is currently not clearly prohibited on some of the most important energy markets.

(7) Derivative trading and commodity trading are used together on wholesale energy markets. It is therefore important that the definitions of market abuse, which consists of insider trading and market manipulation, are compatible between derivatives and commodity markets.

(8) Regulation (EC) No 714/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity[13] and Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks[14] recognise that equal access to information on the physical status and efficiency of the system is necessary to enable all market participants to assess the overall demand and supply situation and identify the reasons for changes in the wholesale price.

(9) It should be clearly prohibited to use or to attempt to use inside information to trade either on one's own account or on the account of a third party. Use of inside information can also consist in trading in wholesale energy products by persons who know, or ought to know, that the information they possess is inside information.

(10) Manipulation on wholesale energy markets involves artificially causing prices to be at a level not justified by the actual availability and costs of production, storage or transportation capacity and demand.

(11) Specification of the definitions of inside information and market manipulation is necessary to account for the specificities of wholesale energy markets, which are dynamic and subject to change. The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in respect to such detailed rules.

(12) Regulation (EC) No 713/2009 of the European Council and of the parliament establishing an Agency for the Cooperation of Energy Regulators[15] furthers the objectives of Article 194 of the Treaty. Had this Article been in force when Regulation (EC) No 713 was adopted, it would have provided the legal basis for the establishment of the Agency for the Cooperation of Energy Regulators (the Agency).

(13) Efficient market monitoring is vital to detecting and deterring market abuse on wholesale energy markets. The Agency is best placed to carry out such monitoring as

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13 OJ L 211, 14.8.2009, p. 15.
14 OJ L 211, 14.8.2009, p. 36.
15 OJ L 211, 14.8.2009, p. 1.

it has both a Union wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union. National regulatory authorities having an important understanding of developments on energy markets in their Member State should have an important role in ensuring efficient market monitoring.

(14) Efficient market monitoring requires regular access to records of transactions. For this reason market participants who trade wholesale energy products should be required to provide this information to the Agency.(15) In order to ensure the necessary flexibility in collecting information on transactions in wholesale energy products, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty setting out the timing, form and content of the information which market participant are required to provide. Reporting obligations should not create unnecessary costs for market participants. Persons reporting transactions to a competent authority in accordance with the provisions of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[16], and to trade repositories and competent authorities in accordance with the provisions of Regulation ../.. of the European Parliament and the Council on OTC derivatives, central counterparties and trade repositories should therefore not be subject to additional reporting obligations under this Regulation.

(16) In order to facilitate efficient monitoring of all aspects of trading in wholesale energy products, the Agency should establish mechanisms to give access to the information which it receives on transactions on wholesale energy markets to other relevant authorities, in particular to the European Securities and Markets Authority (ESMA) established by Regulation (EU) ---/---- of the European parliament and of the Council establishing a European Securities and Markets Authority [ESMA regulation – Commission proposal 2009/0144 (COD)] national regulatory authorities, competent financial authorities of the Member States, competition authorities of the Member States and other relevant authorities.

(17) The Agency should ensure the operational security of the data which it receives, prevent unauthorised access to the information kept by the Agency, and establish procedures to ensure that the data it collects are not misused by persons with an authorised access to them. The Agency should also be assured that those authorities who have access to the data held by Agency will be able to maintain an equally high level of security.

(18) Where information is not commercially sensitive, the Agency should be able to make that information available to market participants and the wider public. Such transparency can help build confidence in the market and help the development of knowledge about the functioning of wholesale energy markets.

(19) National regulatory authorities should be responsible for ensuring that this Regulation is enforced in the Member States. To this end they should have the necessary investigatory powers to allow them to carry out this task efficiently.

(20) The Agency should ensure that the application of this Regulation is done in a coordinated way across the Union, and is coherent with the application of Directive

[16] OJ L 145, 30.04.2004, P. 0001 - 0044

2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)[17]. Since market abuse on wholesale energy markets often affects more than one Member State, the Agency should have an important role in ensuring that investigations are carried out in an efficient and coherent way. To achieve this it should be able to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities, and where appropriate, other authorities.

(21) National regulatory authorities and competent financial authorities should cooperate to ensure a coordinated approach to tackling market abuse on wholesale energy markets which encompasses both commodity markets and derivatives markets.

(22) It is important that the obligation of professional secrecy applies to those who receive confidential information in accordance with the provisions of this Regulation.

(23) It is important that the penalties for breaches of this Regulation are proportionate and dissuasive, and reflect the gravity of the infringements and the potential gains from trading on the basis of inside information and market manipulation. Recognising the interactions between trading in electricity and gas derivative products and trading in actual electricity and gas, the penalties for breaches of this Regulation should be in line with the penalties adopted by the Member States in implementing Directive 2003/6/EC.

(24) Since the objective of this Regulation, namely the provision of a harmonised framework to ensure energy market transparency and integrity, cannot be sufficiently achieved by the Member States and can be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve that objective,

HAVE ADOPTED THIS REGULATION:

Article 1

Subject matter, scope and relationship with other Union legislation

This Regulation establishes rules prohibiting abusive practices on wholesale energy markets coherent with those applying in financial markets. It provides for the monitoring of wholesale energy markets by the Agency.

This Regulation applies to trading in wholesale energy products. The provisions of Article 3 and Article 4 shall not apply to wholesale energy products which are financial instruments and to which the provisions of Article 9 of Directive 2003/6/EC apply. This Regulation is without prejudice to Directive 2003/6/EC and 2004/39/EC as well as to the application of the provisions of European competition law to the practices covered by this Regulation.

[17] OJ L 96, 12.4.2003, p. 16.

The Agency, national regulatory authorities and competent financial authorities shall cooperate to ensure that a coordinated approach is taken to the enforcement of the relevant rules where actions relate to one or more financial instruments to which the provisions of Article 9 of Directive 2003/6/EC apply and also to one or more wholesale energy products to which the provisions of Article 3 and Article 4 apply.

Article 2

Definitions

For the purposes of this Regulation the following definitions shall apply:

1. "inside information" means precise information which has not been made public, relating directly or indirectly to one or more wholesale energy products and which, if it were made public, could significantly affect the prices of such wholesale energy products;

   For the purposes of applying the first subparagraph, information a reasonable market participant would be likely to use as part of the basis of his decision to enter into a transaction relating to a wholesale energy product is information which, if it were made public, would be likely to have a significant effect on the prices of such wholesale energy products. Such information includes information related to the capacity of facilities for production, storage, consumption or transmission of electricity or natural gas, as well as information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the relevant wholesale energy market.

   By way of example, information which is required to be made public in accordance with the provisions of Regulation (EC) No. 714/2009 or Regulation (EC) No. 715/2009, including guidelines and network codes adopted pursuant to those Regulations, can constitute inside information.

2. Market manipulation means:

   (a) entering into transactions or the issuing of orders to trade in wholesale energy products, which:

   – give, or are likely to give, false or misleading signals as to the supply of, demand for or price of wholesale energy products; or

   – secure or attempt to secure, by a person or by persons acting in collaboration, the price of one or several wholesale energy products at an abnormal or artificial level, unless the person who entered into the transactions or issued the orders to trade establishes that his reasons for doing so are legitimate and that these transactions or orders to trade conform to accepted market practices on the wholesale energy market concerned; or

   – employ or attempt to employ fictitious devices or any other form of deception or contrivance;

(b) dissemination of information which gives, or is likely to give, false or misleading signals as to wholesale energy products, including the dissemination of rumours and false or misleading news, where the person who made the dissemination knew, or ought to have known, that the information was false or misleading. In respect of journalists when they act in their professional capacity such dissemination of information is to be assessed taking into account the rules governing their profession, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question.

By way of example, making it appear that the availability of electricity generation capacity or gas availability, or the availability of transmission capacity is other that the capacity which is actually physically available constitutes market manipulation.

3. "attempt to manipulate the market" means:

(a) entering into a transaction, placing an order to trade or taking any other action relating to a wholesale energy product with the intention of:

– giving false or misleading signals as to the supply of, demand for or price of wholesale energy products;

– securing the price of one or several wholesale energy products at an abnormal or artificial level; or

– employing a fictitious device or any other form of deception or connivance relating to a wholesale energy product

(b) disseminating information through the media, including the Internet, or any other means with the intention of giving false or misleading signals as to 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 natural gas or electricity;

(b) derivatives relating to natural gas or electricity;

(c) contracts relating to the transportation of natural gas or electricity;

(d) derivatives relating to the transportation of natural gas or electricity

Contracts for the supply of natural gas or electricity for the use of final consumers are not wholesale energy products.

5. "wholesale energy market" means any marketplace within the Union on which wholesale energy products are traded;

6. "competent financial authority" means a competent authority designated in accordance with the procedure laid down in Article 11 of Directive 2003/6/EC;

7. "national regulatory authority" means a national regulatory authority designated in accordance with the Article 35(1) of Directive 2009/72/EC of the European Parliament and of the Council[18] or Article 39(1) of Directive 2009/73/EC of the European Parliament and of the Council[19];

8. "transmission system operator" has the meaning set out in Article 2(4) of Directive 2009/72/EC and Article 2(4) of Directive 2009/73/EC.

Article 3

Prohibition of insider trading and obligation to publish inside information

1. Persons who possess inside information in relation to a wholesale energy product shall be prohibited from:

   (a) using that information by acquiring or disposing of, or by trying to acquire or dispose of, for their own account or for the account of a third party, either directly or indirectly, wholesale energy products to which that information relates;

   (b) disclosing that information to any other person unless such disclosure is made in the normal course of the exercise of their employment, profession or duties. In this case they must make complete and efficient public disclosure of that information. Where disclosure is intentional the information shall be made available to all persons simultaneously. In the event of a non-intentional disclosure the information shall be made available to all persons as soon as possible following the non-intentional disclosure. This point shall not apply if the person receiving the information owes a duty of confidentiality, regardless of whether such duty is based on a law, on regulations, on articles of association or on a contract;

   (c) recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates

2. The prohibition set out in paragraph 1 applies to the following persons who possess inside information in relation to a wholesale energy product:

   (a) members of the administrative, management or supervisory bodies of an undertaking;

   (b) persons with holdings in the capital of an undertaking;

[18] OJ L 211, 14.8.2009, p. 55.
[19] OJ L 211, 14.8.2009, p. 94.

(c) persons having access to the information through the exercise of their employment, profession or duties;

(d) persons who acquired such information through criminal activity;

(c) persons who know, or ought to know, that it is inside information.

3. Where the person who possesses inside information in relation to a wholesale energy product is a legal person, the prohibitions laid down in paragraph 1 shall also apply to the natural persons who take part in the decision to carry out the transaction for the account of the legal person concerned.

4. Market participants shall publicly disclose inside information in respect of business or facilities which the participant concerned owns or controls or for which the participant is responsible for operational matters, either in whole or in part. Such information shall include information relevant to the capacity of facilities for production, storage, consumption or transmission of electricity or natural gas.

A market participant may under his own responsibility delay the public disclosure of inside information such as not to prejudice his legitimate interests provided that such omission would not be likely to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon this information. In this situation the market participant shall provide this information to the Agency and the relevant national regulatory authority having regard to the provisions of Article 7(4)

The first and second subparagraphs are without prejudice to the obligations of market participants under the provisions of Directive 2009/72/EC, Directive 2009/73/EC, Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009 including guidelines and network codes adopted pursuant to those Directives and Regulations, in particular regarding the timing and method of publication of information.

5. This Article shall not apply to transactions conducted in the discharge of an obligation that has become due to acquire or dispose of wholesale energy products where that obligation results from an agreement concluded before the person concerned possessed inside information.

Paragraphs 1 (a) und (c) shall not apply to transmission system operators when purchasing gas or electricity in order to ensure the safe and secure operation of the system in accordance with their obligation under Article 12(d) and (e) of Directive 2009/72/EC or Article 13(1)(a) and (c) of Directive 2009/73/EC.

Article 4

Prohibition of market manipulation

It shall be prohibited to engage in, or attempt to engage in, market manipulation on wholesale energy markets.

Article 5

Specification of definitions of inside information and market manipulation

1. In order to take account of future developments on wholesale energy markets, the Commission shall adopt delegated acts in accordance with Article 15 and subject to conditions of Articles 16 an 17, specifying the definitions set out at Article 2(1) to (5).

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

   (a) the specific functioning of wholesale energy markets and the interaction between commodity markets and derivative markets;

   (b) the potential impact on wholesale energy market prices of actual or planned production, consumption, use of transmission, or use of storage capacity

   (c) network codes and framework guidelines adopted in accordance with the provisions of Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009.

Article 6

Market monitoring

1. The Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. It shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 7.

2. National regulatory authorities shall cooperate with the Agency in carrying out the monitoring of wholesale energy markets referred to at paragraph 1. For this purpose national regulatory authorities shall have access to relevant information held by the Agency which it has collected in accordance with paragraph 1, subject to the provisions of Article 8(2).

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation. Such reports shall bring to the notice of the Commission flaws in market rules, standards, and procedures which could facilitate insider trading and market manipulation or undermine the internal market. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

   The Agency may make recommendations as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations the Agency shall consult with interested parties in accordance with the provisions of Article 10 of the Regulation (EC) No 713/2009. In particular the Agency shall consult with ESMA, national regulatory authorities and competent financial authorities in the Member States.

Article 7

Data collection

1. The Agency shall be provided with a record of wholesale energy market transactions, including orders to trade. The Commission shall adopt delegated acts in accordance with Article 15 and subject to conditions of Articles 16 and 17, laying down the timing, form and content in which this information is reported and, where appropriate, defining thresholds for the reporting of transactions as well as specifying types of contracts for which transactions shall be reported.

2. The delegated acts referred to in paragraph 1 shall ensure that persons referred to in paragraph 3 a), b) and c) who have reported transactions in accordance with Directive 2004/39/EC[20] or Regulation (EC)---/---- of the European Parliament and of the Council on OTC Derivatives, central counterparties and trade repositories of the European Parliament and of the Council [European Market Infrastructure Regulation – 2010/0250(COD)] are not subject to reporting obligations in addition to those set out in that legislation.

   Without prejudice to the first subparagraph, the delegated acts referred to in paragraph 1 may establish a non-binding framework to allow organised markets and trade matching or trade reporting systems to provide the Agency with a record of wholesale energy transactions.

3. For the purposes of paragraph 1, information shall be provided by:

   (a) the market participant;

   (b) a third party acting on behalf of the market participant;

   (c) an organized market, a trade-matching or a trade reporting system;

   (d) trade repositories registered or recognised under Regulation (EC)---/---- of the European Parliament and of the Council [European Market Infrastructure Regulation – 2010/0250(COD)];

   (e) a competent authority which has received this information in accordance with the provisions of Article 25(3) Directive 2004/39/EC or Article 6(2) of Regulation (EC)---/---- [European Market Infrastructure Regulation – 2010/0250(COD)].

4. Market participants shall provide the Agency and national regulatory authorities with information related to the capacity of facilities for production, storage, consumption or transmission of electricity or natural gas for the purpose of monitoring trading in wholesale energy markets.

[20] OJ L 145, 30.4.2004, p. 1.

The Commission shall adopt delegated acts in accordance with Article 15 and subject to conditions of Articles 16 and 17, laying down the timing, form and content of the information to be reported.

Article 8

Sharing of information between the Agency and other bodies

1. The Agency shall establish mechanisms to share information it receives in accordance with Article 6(1) and Article 7 with national regulatory authorities, the competent financial authorities of the Member States, competition authorities of the Member States and other relevant authorities. The Agency shall only give access to the mechanisms referred to in paragraph 1 to bodies which have set up systems enabling the Agency to meet the requirements of Article 9(1).

2. Trade repositories registered or recognised under Regulation (EC)---/---- [European Market Infrastructure Regulation – 2010/0250(COD)] shall make all information regarding wholesale energy products collected by them available to the Agency.

   Competent financial authorities shall transmit to the Agency reports of transactions in wholesale energy products received under article 25(3) of Directive 2004/39/EC to the Agency and Article 6(2) of Regulation (EC)---/--- [European Market Infrastructure Regulation – 2010/0250(COD)].

Article 9

Data protection and operational reliability

1. The Agency shall ensure the confidentiality, integrity and protection of the information received under Article 7. The Agency shall take steps to prevent any misuse of the information maintained in its systems.

   Where relevant, the Agency will comply with Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data[21].

   The Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures.

2. The Agency may decide to make publicly available parts of the information which it holds provided that commercially sensitive information on individual market participants or individual transactions is not released.

Article 10

Implementation of prohibitions against market abuse

[21] OJ L 8 12.1.2001, p. 1.

1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 4 are applied.

Each Member State shall ensure that national regulatory authorities have the investigatory powers necessary for the exercise of this function. These powers shall be exercised in a proportionate manner. These powers may be exercised:

(a) directly

(b) in collaboration with other authorities or market undertakings;

(c) by application to the competent judicial authorities.

2. The investigatory powers referred to in paragraph 1 include the right to:

(a) have access to any relevant document in any form, and to receive a copy of it;

(b) demand information from any person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and if necessary, to summon and hear any such person;

(c) carry out on-site inspections;

(d) require existing telephone and existing data traffic records;

(e) require the cessation of any practice that is contrary to this Regulation or its delegated acts;

(f) request a court to freeze or sequester assets;

(g) request temporary prohibition of professional activity.

3. Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach the provisions of Articles 3 or 4 shall notify the national regulatory authority without further delay.

Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of the provisions of Articles 3 or 4.

Article 11

Union level cooperation

1. The Agency shall ensure that national regulatory authorities carry out their tasks under this Regulation in a coordinated way.

National regulatory authorities shall cooperate with the Agency and with each other for the purpose of carrying out their duties in accordance with this Regulation.

2. National regulatory authorities shall inform the Agency in as specific a manner as possible where they have reasonable grounds to suspect that acts contrary to the provisions of this Regulation, are being, or have been, carried out either in that Member State or in another Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take measures in accordance with paragraph 4.

3. In order to ensure a coordinated approach to market abuse on wholesale energy markets:

(a) national regulatory authorities shall inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts, which constitute market abuse within the meaning of Directive 2003/6/EC, are being, or have been, carried out on wholesale energy markets and which affect financial instruments subject to the provisions of Article 9 that Directive;

(b) the Agency shall inform ESMA and the appropriate competent financial authority where it has reasonable grounds to suspect that acts, which constitute market abuse within the meaning of Directive 2003/6/EC, are being, or have been, carried out on wholesale energy markets and which affect financial instruments subject to the provisions of Article 9 of that Directive;

(c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts, which breach the provisions of Articles 3 and 4, are being, or have been, carried out on wholesale energy markets in another Member State

4. In order to carry out its functions under paragraph 1, where it suspects that there has been a breach of the provisions of this Regulation the Agency shall have the power to:

(a) request one or more national regulatory authorities to supply any information related to the suspected breach;

(b) request one or more national regulatory authorities to commence an investigation of the suspected breach, and take appropriate action to remedy any such breach;

(c) where it considers that the possible breach has, or has had, a cross-border impact, convene an investigatory group consisting of representatives of concerned national regulatory authorities to investigate if the provisions of this Regulation have been breached and in which Member State the breach took place; where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Member States in the investigatory group.

5. National regulatory authorities shall comply with a request of the Agency made in accordance with the provisions of paragraph 4.

National regulatory authorities receiving a request for information in accordance with paragraph 4(a), or receiving a request to commence an investigation of a suspected breach in accordance with paragraph 4(b), shall immediately take the necessary measures in order to comply with that request. If a national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons.

National regulatory authorities shall participate in an investigatory group convened in accordance with paragraph 4(c), rendering all necessary assistance. The investigatory group shall be subject to coordination by the Agency.

6. The last sentence of Article 15(1) of Regulation (EC) No 713/2009 shall not apply to the Agency when carrying out its tasks under this Regulation

Article 12

Professional secrecy

1. Any confidential information received, exchanged or transmitted pursuant to this Regulation shall be subject to the conditions of professional secrecy laid down in paragraphs 2, 3 and 4.

2. The obligation of professional secrecy shall apply to:

   (a) persons working or who have worked for the Agency;

   (b) auditors and experts instructed by Agency;

   (c) persons working or who have worked for the national regulatory authorities;

   (d) auditors and experts instructed by national regulatory authorities who receive confidential information in accordance with the provisions of this Regulation.

3. Confidential information received by the persons referred to in paragraph 2 in the course of their duties may not be divulged to any other person or authority, except in summary or aggregate form such that an individual market participant or market place cannot be identified, without prejudice to cases covered by criminal law or the other provisions of this Regulation, or other relevant Union legislation.

4. Without prejudice to cases covered by criminal law, the Agency, national regulatory authorities, competent financial authorities, ESMA, bodies or natural or legal persons which receive confidential information pursuant to this Regulation may use it only in the performance of their duties and for the exercise of their functions., Other authorities, bodies, natural or legal persons may use this information for the purpose for which it was provided to them or in the context of administrative or judicial proceedings specifically related to the exercise of those functions, Where the

Agency, national regulatory authorities, competent financial authorities, ESMA, bodies or natural or legal persons communicating information consents thereto, the authority receiving the information may use it for other purposes.

Article 13

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, proportionate and dissuasive. The Member States shall notify those provisions to the Commission by[22]... at the latest and shall notify it without delay of any subsequent amendment affecting them.

Article 14

Relations with third countries

Without prejudice to the competences of the Union institutions, including the European External Action Service, the Agency may establish contacts with supervisory authorities from third countries. It may enter into administrative arrangements with international organisations and the administrations of third countries.

Article 15

Exercise of the delegation

1. The powers to adopt the delegated acts referred to in Articles 5 and 7 shall be conferred on the Commission for an indeterminate period of time.

2. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt delegated acts are conferred on the Commission subject to the conditions laid down in Articles 16 and 17.

Article 16

Revocation of the delegation

1. The delegation of powers referred to in Articles 5 and 7 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of powers shall inform the other institution and the Commission within a reasonable time before the final decision is taken, indicating

[22] OJ insert date one year after adoption of this regulation

the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the Official Journal of the European Union.

Article 17

Objections to delegated acts

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the *Official Journal of the European Union* and shall enter into force at the date stated therein. The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 18

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels, […]

For the European Parliament	*For the Council*
The President	*The President*
[…]	*[…]*

LEGISLATIVE FINANCIAL STATEMENT FOR PROPOSALS

6. FRAMEWORK OF THE PROPOSAL/INITIATIVE

6.1. Title of the proposal/initiative

Regulation (EC) No xxx of the European Parliament and of The Council on Energy Market Integrity and Transparency

6.2. Policy area(s) concerned in the ABM/ABB structure[23]

Policy area: Energy

Activity: Internal market in energy

6.3. Nature of the proposal/initiative

☒ The proposal/initiative relates to **a new action**

☐ The proposal/initiative relates to **a new action following a pilot project/preparatory action**[24]

☐ The proposal/initiative relates to **the extension of an existing action**

☐ The proposal/initiative relates to **an action redirected towards a new action**

6.4. Objectives

6.4.1. The Commission's multiannual strategic objective(s) targeted by the proposal/initiative

Delivering deep, liquid and integrated energy markets fits into Europe's 2020 strategy to reach a smart, sustainable and inclusive growth in Europe. This goal requires among others "well-connected markets where competition and consumer access stimulate growth and innovation"[25] Creating a proper framework for the integrity and transparency of Europe's traded energy markets will foster the desired market integration and underpin overarching European policy objectives

6.4.2. Specific objective(s) and ABM/ABB activity(ies) concerned

ACER is expected to efficiently detect and prevent market misconducts of cross-commodity and cross-border nature on wholesale energy markets. It is also expected that its actions will deter attempted distortive market practices.

23 ABM: Activity-Based Management – ABB: Activity-Based Budgeting.

24 As referred to in Article 49(6)(a) or (b) of the Financial Regulation.

25 COM(2010) 2020, 3.3.2010: "Europe 2020 – A strategy for smart, sustainable and inclusive growth", p. 19.

6.4.3. Expected result(s) and impact

Specify the effects which the proposal/initiative should have on the beneficiaries/groups targeted.

Regular and timely monitoring of wholesale energy markets, including details of wholesale transactions and the operation of energy assets (disaggregated production figures, outages, flow data, storage operation, etc) will allow ACER to efficiently detect and deter market abuses. This will give confidence to market participants and increase general trust in the proper functioning of markets. In addition, decreasing risk premia are expected to result in lower energy prices to all energy users.

6.4.4. Indicators of results and impact

Specify the indicators for monitoring implementation of the proposal/initiative.

- Number of transactions collected and monitored

- Number of abuses detected

- Development of bid-offer spreads over time (as a proxy for market risk premia)

6.5. Grounds for the proposal/initiative

6.5.1. Requirement(s) to be met in the short or long term

The objective of the 'Regulation on Energy Market Integrity and Transparency' (REMIT) is to create an efficient and effective framework which ensures that Europe's traded energy markets function properly, i.e. their outcomes are not distorted by abusive market behaviour, but truly reflect market fundamentals. The central element of this framework is the establishment of a market monitoring function on European level. This function shall be carried out by the recently established Agency for the Cooperation of Energy Regulators[26] (ACER).

To fulfil its objectives ACER will need to set up a dedicated unit consisting of specialists with profound experience in both energy and traded financial markets. It will also have to deploy IT infrastructure capable of handling large number of data and specialist software for automated data analysis purposes.

6.5.2. Added value of EU involvement

The regular monitoring of wholesale transactions together with fundamental market information is an essential function for integrity and regulatory transparency of traded energy markets.

Because traded electricity and gas markets are strongly interlinked, any manipulation occurring on one market would automatically impact the other. Since these commodities and their derivatives are often traded in parallel in different Member States via different trading

[26] Regulation (EC) No 713/2009 of the European Parliament and of the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators, OJ Volume 52, 14 August 2009.

channels, any manipulation involving a combination of different commodity transactions and/or platforms can only be effectively detected if monitoring is organised centrally. The Impact Assessment to this initiative has shown that a central monitoring function will not be provided by the market but can be best organised on European level within an existing Agency with energy profile. The placement of the market monitoring function within ACER would allow for the utilisation of the invaluable energy expertise of its incumbent staff and enable operation at least possible costs by sharing some of the already budgeted overhead cost of ACER

6.5.3. Lessons learned from similar experiences in the past

No similar experience exists

6.5.4. Coherence and possible synergy with other relevant instruments

The rules prohibiting market misconduct are coherent with comparable rules in applicable financial regulation, notably the Market Abuse Directive. In addition, the proposal will introduce a genuine European level wholesale energy transaction monitoring function

6.6. Duration and financial impact

☒ Proposal/initiative of **unlimited duration**

The financial impact of the initiative for the years 2012 and 2013 is in addition to funds already foreseen in the current multiannual financial programming.

6.7. Management mode(s) envisaged[27]

Resources shall be managed by the Agency for the Cooperation of Energy Regulators

[27] Details of management modes and references to the Financial Regulation may be found on the BudgWeb site: http://www.cc.cec/budg/man/budgmanag/budgmanag_en.html

7. MANAGEMENT MEASURES

7.1. Monitoring and reporting rules

Specify frequency and conditions.

ACER shall report to the Commission on a regular basis on its activities in the field of wholesale transaction monitoring and about market abuses that it identified and the results of investigations carried out by enforcement authorities

7.2. Management and control system

7.2.1. Risk(s) identified

Risk of inappropriate data handling

7.2.2. Control method(s) envisaged

The legal proposal contains a number of measures on data protection and operational liability. Further control measures are also envisaged by ACER's governing rules. See also Article 34 of Regulation (EC) No. 713/2009 of the European Parliament and the Council of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators.

7.3. Measures to prevent fraud and irregularities

Specify existing or envisaged prevention and protection measures.

The management of the funds entrusted to the Agency comes under the control of the Court of Auditors (Article 21), the European Parliament (Article 21) and the European Anti-Fraud Office (Article 23).

8. ESTIMATED FINANCIAL IMPACT OF THE PROPOSAL/INITIATIVE

8.1. Heading(s) of the multiannual financial framework and expenditure budget line(s) affected

- Existing expenditure budget lines

In order of multiannual financial framework headings and budget lines.

Heading of multiannual financial framework	Budget line	Type of expenditure	Contribution			
	Number [Description……...…….]	DA/NDA (28)	from EFTA[29] countries	from candidate countries[30]	from third countries	within the meaning of Article 18(1)(aa) of the Financial Regulation
1 A	32.04.10. – Agency for the Cooperation of Energy Regulators	DA	YES	NO	NO	YES

28 DA= Differentiated appropriations / DNA= Non-Differentiated Appropriations.

29 EFTA: European Free Trade Association.

30 Candidate countries and, where applicable, potential candidate countries from the Western Balkans.

8.2. Estimated impact on expenditure

8.2.1. Summary of estimated impact on expenditure

EUR million (to 3 decimal places)

Heading of multiannual financial framework:	Number	[Heading …1 A ……..…….]

ACER (Agency)			Year **2012**	Year **2013**			… enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
•appropriations										
Equipment	Commitments/Payments	(1)	0.985	0.100						
Operating costs	Commitments/Payments	(2)	0.050	0.100						
Mission expenditure for the new task	Commitments/Payments	(3)	0.015	0.090						
Human Resources	Commitments/Payments	(4)	0,265	1,323						

EUR million (to 3 decimal places)

		Year **2012**	Year **2013**			… enter as many years as necessary to show the duration of the impact (see point 1.6)			**TOTAL**
TOTAL appropriations under HEADING 1 of the multiannual financial framework	Commitments	1,315	1,613						
	Payments	1,315	1,613						

8.2.2. Estimated impact on ACER appropriations

– The proposal/initiative requires the use of appropriations, as explained below:

Equipment

According to our estimate the software architecture development phase could cost around 500.000€, without the integration of any data. The licenses fee, including an Oracle database, an ETL software and a specialised screen for further data analyses could reach 50.000€. As for the hardware cost, an initial 15.000€ should be foreseen.

In addition to the above 565.000€, a data flow from every data provider to the database should be established. The set-up of every new (complex) table to import data from a provider is a costly exercise with 1500€/table. Assuming around 200 data providers (20 trading platforms and 180 directly reporting traders across Europe), and a single table to be made available by each data provider on their http/ftp server, an additional 300.000€ is needed. This gives (565.000€ + 300.000€) 865.000€. The cost of initial quality check and testing on the software development & implemented tables, as imposed by Commission standards amounts to an additional 15% of the above costs (exclusive hardware and license fees). This is altogether 985.000€.

The annual cost for the database maintenance and enhancements would probably reach 100.000€. This can be broken down as follows: assuming that around 30 additional data providers will need to be included per year for a few years, the cost would be 30*1.500€ = 45.000€. The software licenses could reach 25.000€ depending on the needs, the hardware maintenance cost could reach 5.000€ and the software enhancements could reach 25.000€.

Operating costs

Additional budget will be needed to cover costs for meetings and studies, as well as translation, publication and public relations. Based on preliminary estimates, these operating costs will amount to 50.000€ in the first year, 100.000€ in the second year, and 300.000€ from the third year assuming that studies will not be ordered during the first years.

Mission expenditure

In order to discharge its tasks, the team will need to organise missions transport and accommodation costs). The mission expenses budget is estimated to come to € 0,113 million per year once the additional team is fully operational. These estimates are based on actual average mission expenses costs attributed to DG ENER.

Staff expenditure

In addition to the database itself and its development which will require external expertise, the absolute minimum staff needed for maintaining and supervising system developments, validating the data gathered, analysing the data, drafting reports, running investigative teams is 15 additional staff. This is broken down as follows:

The maintenance and the supervision of the developments includes, among others, the management of contracts with data providers and developers (financial and contractual), the drafting of technical specifications, the testing of the environment, the user management and

support, etc. Two persons are needed to give the required support to the team. The validation of the data gathered is another essential task, and involves at least three persons considering the number of data providers (200 providers with hourly/daily data). Analysing the data will require at least six persons. Drafting of reports, preparing the cases to the monitoring board, running the investigative groups will involve three persons. One staff will be required to manage the monitoring team.

Total annual staff expenditure is estimated at € 1,59 million once the additional team is fully operational, taking as the average the cost of European Commission staff, i.e. € 0.127 million per year, which includes expenditure associated with buildings and related administrative expenditure (mailing charges, telecommunications, etc.).

Staff expenditure will cover recruitment costs from 2012. The staff expenditure estimate is based on the following recruitment plan:

	Recruitment	ACER staff – Temporary Agents	External staff – SNEs from NRAs
First semester 2012	0		0
Second semester 2012	+5	3	2
First semester 2013	+5	6	4
Second semester 2013	+5	9	6

For the calculation we assumed that additional human resources will be 60% covered by Temporay Agents (€ 127.000 p.a) and 40% by National Experts (€ 74.000 p.a). This reflects a mix which utilises the existing energy market expertise with national energy regulators (NRAs) and experts who have gained specific knowledge in wholesale commodity and/or derivatives trading. Such experts are less likely to be found with NRAs and would therefore have to be recruited as Temporary Agents.

	Year **2012**	Year **2013**			… enter as many years as necessary to show the duration of the impact (see point 1.6)		
• Establishment plan posts (officials and temporary agents)							
Temporary agents at ACER	0,191	0,952					
• External personnel (in Full Time Equivalent unit: FTE)[31]							
SNEs attached to ACER	0,074	0,370					
TOTAL	0,265	1,323					

The agency will ask for the additional staff in the frame of the draft budget procedure of the concerned year through the MASPP and the budgetary financial statement.

[31] CA= Contract Agent; INT= agency staff ("*Intérimaire")*; JED= "*Jeune Expert en Délégation"* (Young Experts in Delegations); LA= Local Agent; SNE= Seconded National Expert.

8.2.3. Compatibility with the current multiannual financial framework

– ☒Proposal/initiative is compatible with the current multiannual financial framework.

8.2.4. Third-party contributions

– The proposal/initiative does not provide for co-financing by third parties

– The proposal/initiative provides for the co-financing estimated below:

Appropriations in EUR million (to 3 decimal places)

	Year **N**	Year **N+1**	Year **N+2**	Year **N+3**	… enter as many years as necessary to show the duration of the impact (see point 1.6)			Total
Specify the co-financing body								
TOTAL appropriations cofinanced								

8.3. Estimated impact on revenue

– ☒Proposal/initiative has no financial impact on revenue.