



**EUROPEAN COMMISSION**  
Impact Assessment Board

Brussels,  
D(2014)

**Opinion**

**Title**

**DG ENER – Impact Assessment on a Proposal for a Commission Regulation implementing the reporting arrangements under Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency**

(draft version of 5 February 2014)\*

**(A) Context**

Regulation (EU) No. 1227/2011 on wholesale energy market integrity and transparency (REMIT) established an EU-wide monitoring framework requiring the Agency for the Cooperation of Energy Regulators (ACER) to collect and screen wholesale market data across the EU and to notify suspicious cases to National Regulatory Authorities (NRAs) for investigation and enforcement. While REMIT already defined some of the data to be collected, it left key issues on scope, format and frequency to be defined later through Implementing Acts - see Article 8(2) and Article 8(6). The draft report examines how best to do this.

**(B) Overall opinion: POSITIVE**

**The report should better demonstrate what kind of information would be needed to better identify cases of market abuse, referring to past experience, current and incoming reporting obligations. It should develop an explicit baseline scenario and explain why the reporting of fundamental data is not addressed. The report should then better explain how the cost figures for the different options have been estimated and look at their relevance across different types of market participants, in particular smaller ones. On this basis, it should better demonstrate the proportionality of the proposed option and justify the lack of minimum reporting thresholds. Finally, the report should explain any differences between the chosen options and ACER recommendations or the preferences of key stakeholder groups.**

**(C) Main recommendations for improvements**

**(1) Strengthen the problem definition and develop a baseline scenario.** Against the background of a more comprehensive description of the market, the report should better explain when market abuse is more likely and how it can be detected, distinguishing between different types of market participants and modes of transactions. To the extent

\* Note that this opinion concerns a draft impact assessment report which may differ from the one adopted

possible, such assessment should be corroborated by available evidence, from Member States or third countries, on the type of information needed to better assess cases of (potential) market abuse. The report should describe which transactional and fundamental data is already being collected and reported under either national or EU legislation (for instance, related EU financial regulations and forthcoming network codes). Against this background, it should clarify which data is currently missing. The report should develop an explicit baseline scenario. In doing so, it should explain the reasons why the reporting of fundamental data is not addressed.

**(2) Improve the assessment and comparison of options.** Relying on a strengthened problem analysis, the report should better demonstrate that the preferred option focuses on the markets and products where the chances of manipulation are the highest and that it does not impose unnecessary costs on (individual) market participants. In order to do so, it should explain how cost estimates were calculated, what explains their change from one option to another and what the likely implementation costs are for a typical company (in particular smaller ones) in each market category. When assessing the effectiveness of options, the report should discuss the state of preparedness of various actors and, in particular, ACER's readiness and capacity to make the best use of the collected data. Finally, the report should explain how the preferred option would be implemented, monitored and revisited in practice.

**(3) Better present the stakeholder preferences.** The report should clarify in which relevant aspects, if any, the chosen policy option diverges from the preferences of key stakeholder groups and from ACER recommendations. In doing so, it should highlight any relevant policy alternative discarded in the early phases of the impact assessment process and explain why (e.g. minimum reporting thresholds, reporting of non-standard transactions at a longer interval than 1 month or not reporting balancing transactions at all, even on request).

*Some more technical comments have been transmitted directly to the author DG and are expected to be incorporated in the final version of the impact assessment report*

#### **(D) Procedure and presentation**

The report should be shortened by avoiding repetition and focussing more narrowly on the policy choices that were left open by REMIT. Additional sections on a baseline scenario and monitoring and evaluation arrangements should be added along with an annex summarizing public and targeted consultation responses, presenting the views of key stakeholders groups per issue considered.

#### **(E) IAB scrutiny process**

Reference number	2013/ENER/025
External expertise used	No
Date of IAB meeting	26 March 2014