I

(Legislative acts)

REGULATIONS

REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 25 October 2011

on wholesale 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 Functioning of European Union, and in particular Article 194(2) thereof,

Having regard to the proposal from the European Commission,

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

Having regard to the opinion of the European Economic and Social Committee [1],

After consulting the Committee of the Regions of the European Union,

Acting in accordance with the ordinary legislative procedure [2],

Whereas:

(1) It is important to ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

(2) The goal of increased integrity and transparency of wholesale energy markets should be to foster open and fair competition in wholesale energy markets for the benefit of final consumers of energy.

(3) 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 might not properly address market integrity issues on the electricity and gas markets and recommended the consideration of an appropriate legislative framework tailored to the energy sector which prevents market abuse and takes sector-specific conditions into account which are not covered by other directives and regulations.

(4) Wholesale energy markets are increasingly interlinked across the Union. Market abuse in one Member State often affects not only wholesale prices for electricity and natural gas across national borders, but also retail prices to consumers and micro-enterprises. Therefore the concern to ensure the integrity of markets cannot be a matter only for individual Member States. Strong cross-border market monitoring is essential for the completion of a fully functioning, interconnected and integrated internal energy market.

(5) Wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, and price formation in both sectors is interlinked. They include, inter alia, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers.

(6) 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.

[1] OJ C 132, 3.5.2011, p. 108.

[2] Position of the European Parliament of 14 September 2011 (not yet published in the Official Journal) and Decision of the Council of 10 October 2011.

(7) Behaviour which undermines the integrity of the energy market is currently not clearly prohibited on some of the most important energy markets. In order to protect final consumers and guarantee affordable energy prices for European citizens, it is essential to prohibit such behaviour.

(8) Derivative trading, which may be either physically or financially settled, and commodity trading are used together on wholesale energy markets. It is therefore important that the definitions of insider trading and market manipulation, which constitute market abuse, be compatible between derivatives and commodity markets. This Regulation should in principle apply to all transactions concluded but at the same time should take into account the specific characteristics of the wholesale energy markets.

(9) Retail contracts which cover the supply of electricity or natural gas to final customers are not susceptible to market manipulation in the same way as wholesale contracts which are easily bought and sold. None the less, the consumption decisions of the largest energy users can also affect prices on wholesale energy markets, with effects across national borders. Therefore it is appropriate to consider the supply contracts of such large users in the context of ensuring the integrity of wholesale energy markets.

(10) Taking account of the results of the examination set out in the Commission Communication of 21 December 2010 entitled 'Towards an enhanced market oversight framework for the EU Emissions Trading Scheme', the Commission should consider bringing forward a legislative proposal to tackle the identified shortcomings in the transparency, integrity and supervision of the European carbon market in an appropriate time-frame.

(11) 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 [1] 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 [2] 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 fluctuations in the wholesale price.

(12) The use or attempted use of inside information to trade either on one's own account or on the account of a third party should be clearly prohibited. 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. Information regarding the market participant's own plans and strategies for trading should not be considered as inside information. Information which is required to be made public in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations, may serve, if it is price-sensitive information, as the basis of market participants' decisions to enter into transactions in wholesale energy products and therefore could constitute inside information until it has been made public.

(13) Manipulation on wholesale energy markets involves actions undertaken by persons that artificially cause prices to be at a level not justified by market forces of supply and demand, including actual availability of production, storage or transportation capacity, and demand. Forms of market manipulation include placing and withdrawal of false orders; spreading of false or misleading information or rumours through the media, including the internet, or by any other means; deliberately providing false information to undertakings which provide price assessments or market reports with the effect of misleading market participants acting on the basis of those price assessments or market reports; and deliberately making it appear that the availability of electricity generation capacity or natural gas availability, or the availability of transmission capacity is other than the capacity which is actually technically available where such information affects or is likely to affect the price of wholesale energy products. Manipulation and its effects may occur across borders, between electricity and gas markets and across financial and commodity markets, including the emission allowances markets.

(14) Examples of market manipulation and attempts to manipulate the market include conduct by a person, or persons acting in collaboration, to secure a decisive position over the supply of, or demand for, a wholesale energy product which has, or could have, the effect of fixing, directly or indirectly, prices or creating other unfair trading conditions; and the offering, buying or selling of wholesale energy products with the purpose, intention or effect of misleading market participants acting on the basis of reference prices. However, accepted market practices such as those applying in the financial services area, which are currently defined by Article 1(5) of Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse) [3] and which may be adapted if that Directive is amended, could be a legitimate way for market participants to secure a favourable price for a wholesale energy product.

[1] OJ L 211, 14.8.2009, p. 15.
[2] OJ L 211, 14.8.2009, p. 36.
[3] OJ L 96, 12.4.2003, p. 16.

(15) The disclosure of inside information in relation to a wholesale energy product by journalists acting in their professional capacity should be assessed taking into account the rules governing their profession and the rules governing the freedom of the press, unless those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question or when disclosure is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

(16) As financial markets develop, the concepts of market abuse applying to those markets will be adapted. In order to ensure the necessary flexibility to respond quickly to these developments therefore, the power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in respect of technical updating of the definitions of inside information and market manipulation for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy. It is of particular importance that the Commission carry out appropriate consultations during its preparatory work, including at expert level. The Commission should, when preparing and drawing up delegated acts, ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

(17) Efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets. The Agency for the Cooperation of Energy Regulators established by Regulation (EC) No 713/2009 of the European Parliament and of the Council [1] ('the Agency') is best placed to carry out such monitoring as 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, which have a comprehensive understanding of developments on energy markets in their Member State, should have an important role in ensuring efficient market monitoring at national level. Close cooperation and coordination between the Agency and national authorities is therefore necessary to ensure proper monitoring and transparency of energy markets. The collection of data by the Agency is without prejudice to the right of national authorities to collect additional data for national purposes.

(18) Efficient market monitoring requires regular and timely access to records of transactions as well as access to structural data on capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas. For this reason market participants, including transmission system operators, suppliers, traders, producers, brokers and large users, who trade wholesale energy products should be required to provide that information to the Agency. The Agency may for its part establish strong links with major organised market places.

(19) In order to ensure uniform conditions for the implementation of the provisions on data collection, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers [2]. Reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. The uniform rules on the reporting of information should therefore undergo an *ex-ante* cost-benefit analysis, should avoid double reporting, and should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and existing sources where possible. Where a market participant or a third party acting on its behalf, a trade reporting system, an organised market, a trade-matching system, or other person professionally arranging transactions has fulfilled its reporting obligations to a competent authority in accordance with Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments [3] or applicable Union legislation on derivative transactions, central counterparties and trade repositories, its reporting obligation should be considered fulfilled also under this Regulation, but only to the extent that all the information required under this Regulation has been reported.

(20) It is important that the Commission and the Agency work closely together in implementing this Regulation and consult appropriately with the European Networks of Transmission System Operators for Electricity and for Gas and the European Securities and Markets Authority established by Regulation (EU) No 1095/2010 of the European Parliament and of the Council [4] (ESMA), with national regulatory authorities, competent financial authorities and other Member State authorities such as national competition authorities, and with stakeholders such as organised market places (e.g. energy exchanges) and market participants.

[1] OJ L 211, 14.8.2009, p. 1.

[2] OJ L 55, 28.2.2011, p. 13.

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

[4] OJ L 331, 15.12.2010, p. 84.

(21) A European register of market participants, based on national registers, should be established to enhance the overall transparency and integrity of wholesale energy markets. One year after the establishment of that register, the Commission should assess in cooperation with the Agency, in line with the reports submitted by the Agency to the Commission, and with the national regulatory authorities, the functioning and the usefulness of the European register of market participants. If deemed appropriate based on that assessment, the Commission should consider presenting further instruments to enhance the overall transparency and integrity of wholesale energy markets and to ensure a Union-wide level playing field for market participants.

(22) 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 ESMA, national regulatory authorities, competent financial authorities of the Member States, national competition authorities, and other relevant authorities.

(23) The Agency should ensure the operational security and protection 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 ascertain whether those authorities which have access to the data held by the Agency are able to maintain an equally high level of security and are bound by appropriate confidentiality arrangements. The operational security of the IT systems used for processing and transmitting the data therefore also needs to be ensured. For setting up an IT system that ensures the highest possible level of data confidentiality, the Agency should be encouraged to work closely with the European Network and Information Security Agency (ENISA). These rules should also apply to other authorities that are entitled to access to the data for the purpose of this Regulation.

(24) This Regulation respects fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union as referred to in Article 6 of the Treaty on European Union and the constitutional traditions in the Member States and should be applied in accordance with the right to freedom of expression and information recognised in Article 11 of the Charter.

(25) Where information is not, or no longer, sensitive from a commercial or security viewpoint, the Agency should be able to make that information available to market participants and the wider public with a view to contributing to enhanced market knowledge. Such transparency will help build confidence in the market and foster the development of knowledge about the functioning of wholesale energy markets. The Agency should establish and make publicly available rules on how it will make that information available in a fair and transparent manner.

(26) 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 that task efficiently. These powers should be exercised in conformity with national law and may be subject to appropriate oversight.

(27) The Agency should ensure that this Regulation is applied in a coordinated way across the Union, coherent with the application of Directive 2003/6/EC. To that effect, the Agency should publish non-binding guidance on the application of the definitions set out in this Regulation, as appropriate. That guidance should address, inter alia, the issue of accepted market practices. Furthermore, 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, the Agency should be able to request cooperation and to coordinate the operation of investigatory groups comprised of representatives of the concerned national regulatory authorities and, where appropriate, other authorities including national competition authorities.

(28) The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under this Regulation. For this purpose, the procedure for the establishment, implementation and control of its budget as set out in Articles 23 and 24 of Regulation (EC) No 713/2009 should take due account of these tasks. The budgetary authority should ensure that the best standards of efficiency are met.

(29) National regulatory authorities, competent financial authorities of the Member States and, where appropriate, national competition authorities should cooperate to ensure a coordinated approach to tackling market abuse on wholesale energy markets which encompasses both commodity markets and derivatives markets. That cooperation should include the mutual exchange of information regarding suspicions that acts which are likely to constitute a breach of this Regulation, Directive 2003/6/EC, or competition law are being or have been carried out on wholesale energy markets. Furthermore, that cooperation should contribute to a coherent and consistent approach to investigations and judicial proceedings.

(30) It is important that the obligation of professional secrecy applies to those who receive confidential information in accordance with this Regulation. The Agency, national regulatory authorities, competent financial authorities of the Member States and national competition authorities should ensure the confidentiality, integrity and protection of the information which they receive.

(31) It is important that the penalties for breaches of this Regulation are proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation. The application of these penalties should be carried out in accordance with national law. Recognising the interactions between trading in electricity and natural gas derivative products and trading in actual electricity and natural 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. Taking account of the consultation on the Commission Communication of 12 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate time-frame. This Regulation affects neither national rules on the standard of proof nor obligations of national regulatory authorities and courts of the Member States to ascertain the relevant facts of a case, provided that such rules and obligations are compatible with general principles of Union law.

(32) Since the objective of this Regulation, namely the provision of a harmonised framework to ensure wholesale energy market transparency and integrity, cannot be sufficiently achieved by the Member States and can therefore 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

1. This Regulation establishes rules prohibiting abusive practices affecting wholesale energy markets which are coherent with the rules applicable in financial markets and with the proper functioning of those wholesale energy markets whilst taking into account their specific characteristics. It provides for the monitoring of wholesale energy markets by the Agency for the Cooperation of Energy Regulators ('the Agency') in close collaboration with national regulatory authorities and taking into account the interactions between the Emissions Trading Scheme and wholesale energy markets.

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.

3. The Agency, national regulatory authorities, ESMA, competent financial authorities of the Member States and, where appropriate, national competition 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 Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of this Regulation apply.

4. The Agency's Administrative Board shall ensure that the Agency carries out the tasks assigned to it under this Regulation in accordance with this Regulation and Regulation (EC) No 713/2009.

5. The Director of the Agency shall consult the Agency's Board of Regulators on all aspects of implementation of this Regulation and give due consideration to its advice and opinions.

Article 2

Definitions

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

(1) 'inside information' means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

For the purposes of this definition, 'information' means:

(a) information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations;

(b) information relating 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;

(c) 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, in so far as this information is likely to have a significant effect on the prices of wholesale energy products; and

(d) other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

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;

(2) 'market manipulation' means:

(a) entering into any transaction or issuing any order to trade in 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 attempts 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 or attempts to employ 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;

or

(b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products;

(3) 'attempt to manipulate the market' means:

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

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

(ii) securing 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) employing 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;

or

(b) disseminating information through the media, including the internet, or by any other means with the intention of giving false or misleading signals as to the supply of, demand for, or price of 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;

(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;

(5) 'consumption capacity' means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.

For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;

(6) 'wholesale energy market' means any market within the Union on which wholesale energy products are traded;

(7) 'market participant' means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets;

(8) 'person' means any natural or legal person;

(9) 'competent financial authority' means a competent authority designated in accordance with the procedure laid down in Article 11 of Directive 2003/6/EC;

(10) 'national regulatory authority' means a national regulatory authority designated in accordance with Article 35(1) of Directive 2009/72/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity [1] or Article 39(1) of Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas [2];

(11) 'transmission system operator' has the meaning set out in point 4 of Article 2 of Directive 2009/72/EC and in point 4 of Article 2 of Directive 2009/73/EC;

(12) 'parent undertaking' means a parent undertaking within the meaning of Articles 1 and 2 of the Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts [3];

(13) 'related undertaking' means either a subsidiary or other undertaking in which a participation is held, or an undertaking linked with another undertaking by a relationship within the meaning of Article 12(1) of Directive 83/349/EEC;

(14) 'distribution of natural gas' has the meaning set out in point (5) of Article 2 of Directive 2009/73/EC;

(15) 'distribution of electricity' has the meaning set out in point (5) of Article 2 of Directive 2009/72/EC.

Article 3

Prohibition of insider trading

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;

(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;

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

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

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

[1] OJ L 211, 14.8.2009, p. 55.
[2] OJ L 211, 14.8.2009, p. 94.
[3] OJ L 193, 18.7.1983, p. 1.

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

4. This Article shall not apply to:

(a) 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, or an order to trade placed, before the person concerned came into possession of inside information;

(b) transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the transmission system operator(s) concerned in order to ensure safe and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to the Agency and the national regulatory authority. This reporting obligation is without prejudice to the obligation set out in Article 4(1);

(c) market participants acting under national emergency rules, where national authorities have intervened in order to secure the supply of electricity or natural gas and market mechanisms have been suspended in a Member State or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 4.

5. 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.

6. When information is disseminated for the purposes of journalism or artistic expression such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

(a) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or

(b) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

Article 4

Obligation to publish inside information

1. 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. 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.

2. A market participant may under its own responsibility exceptionally delay the public disclosure of inside information so as not to prejudice its legitimate interests provided that such omission is not 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 that information. In such a situation the market participant shall without delay provide that information, together with a justification for the delay of the public disclosure, to the Agency and the relevant national regulatory authority having regard to Article 8(5).

3. Whenever a market participant or a person employed by, or acting on behalf of, a market participant discloses inside information in relation to a wholesale energy product in the normal exercise of his employment, profession or duties as referred to in point (b) of Article 3(1), that market participant or person shall ensure simultaneous, complete and effective public disclosure of that information. In the event of a non-intentional disclosure the market participant shall ensure complete and effective public disclosure of the information as soon as possible following the non-intentional disclosure. This paragraph shall not apply if the person receiving the information has a duty of confidentiality, regardless of whether such duty derives from law, regulation, articles of association or a contract.

4. 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 simultaneous, complete and effective public disclosure.

5. Where an exemption from the obligation to publish certain data has been granted to a transmission system operator, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, that operator is thereby also exempted from the obligation set out in paragraph 1 of this Article in respect of that data.

6. Paragraphs 1 and 2 are without prejudice to the obligations of market participants under Directives 2009/72/EC and 2009/73/EC, and Regulations (EC) No 714/2009 and (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.

7. Paragraphs 1 and 2 are without prejudice to the right of market participants to delay the disclosure of sensitive information relating to the protection of critical infrastructure as provided for in point (d) of Article 2 of Council Directive 2008/114/EC of 8 December 2008 on the identification and designation of European critical infrastructures and the assessment of the need to improve their protection [1], if it is classified in their country.

Article 5

Prohibition of market manipulation

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

Article 6

Technical updating of definitions of inside information and market manipulation

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 20 in order to:

(a) align the definitions set out in points (1), (2), (3) and (5) of Article 2 for the purpose of ensuring coherence with other relevant Union legislation in the fields of financial services and energy; and

(b) update those definitions for the sole purpose of taking into account future developments on wholesale energy markets.

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

(a) the specific functioning of wholesale energy markets, including the specificities of electricity and gas markets, and the interaction between commodity markets and derivative markets;

(b) the potential for manipulation across borders, between electricity and gas markets and across commodity markets and derivative markets;

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

(d) network codes and framework guidelines adopted in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 7

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 8.

2. National regulatory authorities shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets referred to in 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 of this Article, subject to Article 10(2). National regulatory authorities may also monitor trading activity in wholesale energy products at national level.

Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the national regulatory authority. In carrying out such market monitoring, the national competition authority or the market monitoring body shall have the same rights and obligations as the national regulatory authority pursuant to the first subparagraph of this paragraph, the second sentence of the second subparagraph of paragraph 3 of this Article, the second sentence of Article 4(2), the first sentence of Article 8(5), and Article 16.

3. The Agency shall at least on an annual basis submit a report to the Commission on its activities under this Regulation and make this report publicly available. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of Regulation (EC) No 713/2009.

The Agency may make recommendations to the Commission 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 particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.

All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.

[1] OJ L 345, 23.12.2008, p. 75.

Article 8

Data collection

1. Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. The information reported shall include the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information. While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled.

2. The Commission shall, by means of implementing acts:

(a) draw up a list of the contracts and derivatives, including orders to trade, which are to be reported in accordance with paragraph 1 and appropriate *de minimis* thresholds for the reporting of transactions where appropriate;

(b) adopt uniform rules on the reporting of information which is to be provided in accordance with paragraph 1;

(c) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting systems.

3. Persons referred to in points (a) to (d) of paragraph 4 who have reported transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories shall not be subject to double reporting obligations relating to those transactions.

Without prejudice to the first subparagraph of this paragraph, the implementing acts referred to in paragraph 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

4. 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) a trade reporting system;

(d) an organised market, a trade-matching system or other person professionally arranging transactions;

(e) a trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories; or

(f) a competent authority which has received that information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received that information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories.

5. Market participants shall provide the Agency and national regulatory authorities with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

6. The Commission shall, by means of implementing acts:

(a) adopt uniform rules on the reporting of information to be provided in accordance with paragraph 5 and on appropriate thresholds for such reporting where appropriate;

(b) lay down the timing and form in which that information is to be reported.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 21(2). They shall take account of existing reporting obligations under Regulations (EC) No 714/2009 and (EC) No 715/2009.

Article 9

Registration of market participants

1. Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident or, if they are not established or resident in the Union, in a Member State in which they are active.

A market participant shall register only with one national regulatory authority. Member States shall not require a market participant already registered in another Member State to register again.

The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules.

2. Not later than 3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2), national regulatory authorities shall establish national registers of market participants which they shall keep up to date. The register shall give each market participant a unique identifier and shall contain sufficient information to identify the market participant, including relevant details relating to its value added tax number, its place of establishment, the persons responsible for its operational and trading decisions, and the ultimate controller or beneficiary of the market participant's trading activities.

3. National regulatory authorities shall transmit the information in their national registers to the Agency in a format determined by the Agency. The Agency shall, in cooperation with those authorities, determine that format and shall publish it by 29 June 2012. Based on the information provided by national regulatory authorities, the Agency shall establish a European register of market participants. National regulatory authorities and other relevant authorities shall have access to the European register. Subject to Article 17, the Agency may decide to make the European register, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed.

4. Market participants referred to in paragraph 1 of this Article shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1).

5. Market participants referred to in paragraph 1 shall communicate promptly to the national regulatory authority any change which has taken place as regards the information provided in the registration form.

Article 10

Sharing of information between the Agency and other authorities

1. The Agency shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with national regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities. Before establishing such mechanisms, the Agency shall consult with those authorities.

2. The Agency shall give access to the mechanisms referred to in paragraph 1 only to authorities which have set up systems enabling the Agency to meet the requirements of Article 12(1).

3. Trade repositories registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories shall make relevant information regarding wholesale energy products and derivatives of emissions allowances collected by them available to the Agency.

ESMA shall transmit to the Agency reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC and under applicable Union legislation on derivative transactions, central counterparties and trade repositories. Competent authorities receiving reports of transactions in wholesale energy products received pursuant to Article 25(3) of Directive 2004/39/EC shall transmit those reports to the Agency.

The Agency and authorities responsible for overseeing trading in emissions allowances or derivatives relating to emissions allowances shall cooperate with each other and establish appropriate mechanisms to provide the Agency with access to records of transactions in such allowances and derivatives where those authorities collect information on such transactions.

Article 11

Data protection

This Regulation shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] or the obligations of the Agency, when fulfilling its responsibilities, relating to its processing of personal data under 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 [2].

Article 12

Operational reliability

1. The Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2) and Articles 8 and 10. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems.

National regulatory authorities, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 and shall take steps to prevent any misuse of such information.

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

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

2. Subject to Article 17, the Agency may decide to make publicly available parts of the information which it possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred.

The Agency shall make its commercially non-sensitive trade database available for scientific purposes, subject to confidentiality requirements.

Information shall be published or made available in the interest of improving transparency of wholesale energy markets and provided it is not likely to create any distortion in competition on those energy markets.

The Agency shall disseminate information in a fair manner according to transparent rules which it shall draw up and make publicly available.

Article 13

Implementation of prohibitions against market abuse

1. National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation set out in Article 4 are applied.

Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function by 29 June 2013. Those powers shall be exercised in a proportionate manner.

Those powers may be exercised:

(a) directly;

(b) in collaboration with other authorities; or

(c) by application to the competent judicial authorities.

Where appropriate, the national regulatory authorities may exercise their investigatory powers in collaboration with organised markets, trade-matching systems or other persons professionally arranging transactions as referred to in point (d) of Article 8(4).

2. The investigatory and enforcement powers referred to in paragraph 1 shall be limited to the aim of the investigation. They shall be exercised in conformity with national law and 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 relevant 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, the right to summon and hear any such person or principal;

(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 delegated acts or implementing acts adopted on the basis thereof;

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

(g) request a court or any competent authority to impose a temporary prohibition of professional activity.

Article 14

Right of appeal

Member States shall ensure that suitable mechanisms exist at national level under which a party affected by a decision of the regulatory authority has a right of appeal to a body independent of the parties involved and of any government.

Article 15

Obligations of persons professionally arranging transactions

Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 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 Article 3 or 5.

Article 16

Cooperation at Union and national level

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

The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as appropriate.

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

National regulatory authorities, competent financial authorities and the national competition authority in a Member State may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.

2. National regulatory authorities shall without delay inform the Agency in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach 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 action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.

3. In order to ensure a coordinated and consistent 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 are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;

(b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to 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 in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;

(d) national regulatory authorities shall inform the national competition authority of their Member State, the Commission and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.

4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Agency suspects that there has been a breach of this Regulation, it shall have the power:

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

(b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;

(c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has 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. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

(a) compliance might adversely affect the sovereignty or security of the Member State addressed;

(b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or

(c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed.

In any such case, the national regulatory authority shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, 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 17

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 who work or who have worked for the Agency;

(b) auditors and experts instructed by the Agency;

(c) persons who work or who have worked for the national regulatory authorities or for other relevant authorities;

(d) auditors and experts instructed by national regulatory authorities or by other relevant authorities who receive confidential information in accordance with 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, 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 of the Member States, ESMA, bodies or 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 or persons may use that 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. The authority receiving the information may use it for other purposes, provided that the Agency, national regulatory authorities, competent financial authorities of the Member States, ESMA, bodies or persons communicating information consent thereto.

5. This Article shall not prevent an authority in a Member State from exchanging or transmitting, in accordance with national law, confidential information provided that it has not been received from an authority of another Member State or from the Agency under this Regulation.

Article 18

Penalties

The Member States shall lay down the rules on penalties applicable to infringements of this Regulation and shall take all measures necessary to ensure that they are implemented. The penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

The Member States shall notify those provisions to the Commission by 29 June 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them.

Member States shall provide that the national regulatory authority may disclose to the public measures or penalties imposed for infringement of this Regulation unless such disclosure would cause disproportionate damage to the parties involved.

Article 19

International relations

In so far as is necessary to achieve the objectives set out in this Regulation and without prejudice to the respective competences of the Member States and the Union institutions, including the European External Action Service, the Agency may develop contacts and enter into administrative arrangements with supervisory authorities, international organisations and the administrations of third countries in particular with those impacting the Union energy wholesale market in order to promote the harmonisation of the regulatory framework. Those arrangements shall not create legal obligations in respect of the Union and its Member States nor shall they prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with those supervisory authorities, international organisations and the administrations of third countries.

Article 20

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.

2. The power to adopt delegated acts referred to in Article 6 shall be conferred on the Commission for a period of 5 years from 28 December 2011. The Commission shall draw up a report in respect of the delegation of power not later than 9 months before the end of the 5-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than 3 months before the end of each period.

3. The delegation of power referred to in Article 6 may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.

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

5. A delegated act adopted pursuant to Article 6 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of 2 months of notification of that act to the European Parliament and to the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by 2 months at the initiative of the European Parliament or the Council.

Article 21

Committee procedure

1. The Commission shall be assisted by a committee. That committee shall be a committee within the meaning of Regulation (EU) No 182/2011.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

Article 22

Entry into force

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Paragraph 1, the first subparagraph of paragraph 3, and paragraphs 4 and 5 of Article 8 shall apply with effect from 6 months after the date on which the Commission adopts the relevant implementing acts referred to in paragraphs 2 and 6 of that Article.

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

Done at Strasbourg, 25 October 2011.

For the European Parliament
The President
J. BUZEK

For the Council
The President
M. DOWGIELEWICZ

COMMISSION STATEMENT

The Commission considers that the thresholds for reporting transactions within the meaning of Article 8(2)(a) and information within the meaning of Article 8(6)(a) cannot be set through implementing acts.

Where appropriate the Commission will come forward with a legislative proposal to set such thresholds.

COUNCIL STATEMENT

The EU legislator has conferred on the Commission implementing powers in accordance with Article 291 TFEU in relation to measures foreseen in Article 8. That is legally binding for the Commission despite the declaration it made in respect to Article 8(2)(a) and Article 8(6)(a).