

# **LAW ON SURVEILLANCE OF WHOLESALE ELECTRICITY AND GAS MARKET**

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## **I GENERAL PROVISIONS**

### **Subject matter**

#### **Article 1**

This Law regulates the surveillance of the wholesale electricity and natural gas market.

### **Wholesale electricity and natural gas market**

#### **Article 2**

- (1) Wholesale electricity and natural gas market (hereinafter: wholesale market) is a market in which a participant in the wholesale market trades in wholesale energy products, as follows:
- 1) electricity or natural gas, which are the subject of the contract on supply or transportation,
  - 2) electricity or natural gas derivatives,
  - 3) electricity or natural gas, which are the subject of a supply or distribution contract concluded with a natural or legal person purchasing electricity or natural gas for own consumption (hereinafter: final customer), with a consumption capacity above 600 GWh per year.
- (2) The consumption capacity referred to in paragraph 1, point 3 of this Article is the consumption of the final customer of electricity or natural gas, which that customer could achieve annually if he engaged all plants, i.e. production capacities throughout the year.

### **Participant in the wholesale market**

#### **Article 3**

A participant in the wholesale market is a natural or legal person, or an entrepreneur, as well as a transmission and distribution system operator, who:

- 1) places orders to trade electricity or natural gas on the wholesale market, or
- 2) enters into a transactions of purchase and/or sale of electricity or natural gas on the wholesale market.

## **Surveillance of the wholesale market**

### **Article 4**

Surveillance of the wholesale market is performed by the Energy and Water Regulatory Agency (hereinafter: the Agency).

## **Definitions**

### **Article 5**

The terms used in this Law have the following meaning:

- 1) **distribution of electricity** means the transport of electricity on distribution systems with a view to its delivery to final customers, which shall not include electricity supply;
- 2) **distribution of natural gas** means the transport of natural gas through local or regional gas pipeline systems with a view to its delivery to final customers, which shall not include gas supply;
- 3) **distribution system operator** means an energy undertaking carrying out the electricity or natural gas distribution activity, which is responsible for the operation, maintenance and development of the distribution system in a given area, its interconnection with other systems, as well as for ensuring the long-term ability of the system to meet demands for distribution of electricity or natural gas in an economically feasible manner;
- 4) **transmission system operator** means an energy undertaking carrying out the electricity or natural gas transmission activity, which is responsible for the operation, maintenance and development of the transmission system in a given area, its interconnection with other systems, as well as for ensuring the long-term ability of the system to meet demands for transmission of electricity or natural gas in an economically feasible manner;
- 5) **natural gas storage system operator** means an energy undertaking that carries out the storage activity and which is responsible for the management, functioning, maintenance, and development of the system for natural gas storage.

## **Use of gender sensitive language**

### **Article 6**

The terms used in this law for natural persons in the masculine gender imply the same terms in the feminine gender.

## **II. INSIDE INFORMATION AND PROHIBITION OF WHOLESALE MARKET MANIPULATION**

### **Entry in the register of participants in the wholesale market**

#### **Article 7**

- (1) For the purpose of exercising surveillance of the wholesale market, the Agency shall keep records of participants in the wholesale market in electronic form.
- (2) A participant in the wholesale market shall, before placing an order to trade or entering into a transaction of purchase and/or sale of electricity or natural gas on the wholesale market, submit to the Agency an application for entry in the register of participants in the wholesale market.
- (3) The participant in the wholesale market shall submit the changed data from the application referred to in paragraph 2 of this Article to the Agency within 24 hours from the occurrence of the change of such data.
- (4) The application form for an entry in the records of participants in the wholesale market shall be determined and published on its website by the Agency.

#### **Inside information**

#### **Article 8**

- (1) A participant in the wholesale market is obliged to publish inside information in accordance with Article 9 of this Law, in order to ensure the proper functioning of the wholesale market.
- (2) Inside information in terms of paragraph 1 of this Article is information that indicates an event that has happened or will happen, and is sufficiently precise that a participant in the wholesale market can draw a conclusion on the impact of that event on wholesale energy product prices, which is not publicly available and relate to one or more wholesale energy products and could have a significant impact on the prices of those wholesale energy products, if it meets one of the following conditions, namely:
  - 1) relates to the capacity and use of facilities for the production, storage, consumption, or transmission of electricity or natural gas, as well as the capacity and use of facilities for liquefied natural gas, including their unavailability;
  - 2) relates to the functioning of the wholesale market and is published in accordance with the law governing the cross-border exchange of electricity and natural gas and the law governing the manner of performing energy activities;
  - 3) it is used by a participant in the wholesale market when making a decision on performing a transaction on the wholesale market.

## **Public disclosure and delay of public disclosure of inside information**

### **Article 9**

- (1) The participant in the wholesale market is obliged to publicly disclose within 24 hours, from the occurrence of inside information, using the electronic systems of organizations that are on the list of the Agency for Cooperation of Energy Regulators:
  - 1) inside information referred to in Article 8, paragraph 2 of this Law; and
  - 2) complete inside information, if it discloses a part of inside information related to a certain wholesale energy product during the performance of its activity.
- (2) Notwithstanding paragraph 1 of this Article, a participant in the wholesale market may delay the public disclosure of inside information in order not to jeopardize its business, of which it shall notify the Agency within 24 hours of the occurrence of inside information, if:
  - 1) by delaying the public disclosure of that information, the public is not misled, and
  - 2) ensures the confidentiality of that information and does not make decisions relating to trading on wholesale market based upon that information.
- (3) The participant in the wholesale market is obliged to notify the Agency about the delay of the public disclosure of the information referred to in paragraph 2 of this Article and to submit the inside information whose public disclosure is delayed.
- (4) The form of the notification on the delay of the public disclosure of information and the list referred to in paragraph 1 of this Article shall be determined and published on its website by the Agency.

## **Prohibition of insider trading**

### **Article 10**

- (1) A participant in the wholesale market, prior to the public disclosure of inside information, is prohibited from:
  - 1) using that information when buying or selling, or attempting to buy or sell wholesale energy products to which that information relates, for its own account or for the account of a third party;
  - 2) transferring that information to another natural or legal person, unless that information is necessary for the regular performance of activities;
  - 3) encouraging another natural or legal person to buy or sell the wholesale energy product to which this information relates.

- (2) Notwithstanding paragraph 1 of this Article, a participant in the wholesale market may enter into a transactions with wholesale energy products prior to the public disclosure of inside information:
- 1) as a producer of electricity or natural gas, an operator of a natural gas storage system, or an operator of a terminal for the import of liquefied natural gas, if:
    - the purpose of these transactions is to cover physical losses resulting from its unplanned outages, where that market participant would not be able to meet existing contractual obligations, or
    - these transactions are performed in agreement with the operator of the electricity or natural gas transmission system in order to ensure the safe and reliable operation of the electricity or natural gas transmission system;
  - 2) as a transmission system operator, in order to ensure safe and reliable operation of the system in accordance with the obligations prescribed by the law governing the manner of performing energy activities;
  - 3) for the purpose of securing the supply of electricity or natural gas in the event of disturbances in the electricity or natural gas market in accordance with the law governing the manner of performing energy activities.
- (3) The participant in the wholesale market shall be obliged to notify the Agency about the executed transaction referred to in paragraph 2 of this Article within 24 hours from the execution of the transaction.

### **Persons who have access to inside information**

#### **Article 11**

- (1) A participant in the wholesale market is obliged to compile a list of persons who have access to inside information.
- (2) The participant in the wholesale market is obliged to keep the list referred to in paragraph 1 of this Article:
  - 1) regularly updated;
  - 2) submit to the Agency within 24 hours from the day of its compilation or updating;
  - 3) keep for at least six years from the day of its compilation or updating.
- (3) The list referred to in paragraph 1 of this Article shall contain the following information:
  - 1) name, surname and address of the natural person, or name and seat of the legal entity that has access to inside information;
  - 2) the date and time when the natural or legal person acquired the right to access inside information;

- 3) telephone number and e-mail address of a natural or legal person who has access to inside information.

### **Prohibition of manipulation in the wholesale market**

#### **Article 12**

A participant in the wholesale market is prohibited from:

- 1) entering into a transaction or attempting to enter into a transaction or issuing an order or attempting to issue an order to trade wholesale energy products, by which:
  - a) provide or will provide false or misleading signals about the supply, demand, or price of wholesale energy products;
  - b) through the cooperation of the participants in the wholesale market, the price of one or more wholesale energy products is maintained or will be maintained at a level that does not correspond to the real situation on the wholesale market, unless the participant in the wholesale market participating in the transaction or issuing an order to trade proves that he was acting in accordance with the law, i.e. accepted practice in the wholesale market; or
  - c) other wholesale market participants are misled regarding the supply, demand, or price of wholesale energy products;
- 2) transmits or attempts to transmit information through the media, the Internet, or in any other way, which gives untrue or misleading information about the supply, demand, or price of wholesale energy products;
- 3) undertakes actions or attempts to take actions by which the price of one or more wholesale energy products is maintained or will probably be maintained at a level that does not correspond to the real situation on the wholesale market.

### **III. SURVEILLANCE OF THE WHOLESAL MARKET**

#### **Obligations of participants in the wholesale market**

#### **Article 13**

(1) A participant in the wholesale market is obliged to:

- 1) by the 15<sup>th</sup> of the current month for the previous month, submit to the Agency data on executed transactions with wholesale energy products, as follows:
  - on purchased and sold wholesale energy products;
  - on the price and quantity of purchased and sold wholesale energy products;

- on participants in executed transactions;
  - on the date and time of execution of transactions;
- 2) keep records of:
- published inside information referred to in Article 8 of this Law;
  - executed transactions with wholesale energy products.
- (2) The participant in the wholesale market is obliged to provide at the request of the Agency:
- 1) access to data and documentation related to transactions and orders to trade in wholesale energy products;
  - 2) the submission of data, information, and documents needed for the wholesale market monitoring within the deadline set by the Agency;
  - 3) written statements regarding the execution of transactions and the issuance of orders to trade in wholesale energy products;
  - 4) unhindered performance of direct control in business premises.
- (3) The participant in the wholesale market is obliged to keep the records referred to in paragraph 1, point 2 of this Article on a permanent medium that enables:
- 1) fast access to information and reconstruction of key stages of processing of each transaction;
  - 2) simple determination of corrections or other changes in records, as well as the content of records before corrections or changes;
  - 3) preventing the manipulation or alteration of data from records in another way.
- (4) The participant in the wholesale market is obliged to keep the records referred to in paragraph 1, point 2 of this Article on a permanent medium for six years.
- (5) Notwithstanding paragraph 4 of this Article, the Agency may order a participant in the wholesale market to keep data and records for more than six years.

## **Powers and obligations of the Agency in exercising surveillance of the wholesale market**

### **Article 14**

- (1) While performing surveillance of the wholesale market, the Agency is authorized to:
- 1) access data and documentation related to transactions and orders to trade in wholesale energy products;

- 2) demand data, information, and documents needed for wholesale market monitoring;
  - 3) obtain written statements from the participants in the wholesale market and/or its employees in relation to the execution of transactions and the issuance of orders to trade wholesale energy products;
  - 4) perform direct control in the business premises of participants in the wholesale market.
- (2) The Agency is obliged to prepare an annual report on the activities of surveillance of the wholesale market and publish it on its website.

### **Obligations of a natural or legal person professionally arranging transactions**

#### **Article 15**

A legal entity that provides the service of matching supply and demand, or a person that mediates in the execution of transactions with wholesale energy products is obliged to:

- 1) notify the Agency if it suspects that the transaction has not been performed in accordance with Art. 10 or 12 of this Law;
- 2) apply measures to detect and prevent insider trading or attempted insider trading and manipulation or attempted manipulation in the wholesale market;
- 3) at the request of the Agency:
  - submit data, information and documentation related to transactions in wholesale energy products within the deadline set by the Agency,
  - provide access to business documentation necessary for the wholesale market monitoring.

### **Powers of the Agency in eliminating irregularities**

#### **Article 16**

- (1) If during the surveillance of the wholesale market the Agency determines that the participant in the wholesale market has not acted in accordance with this Law, the Agency shall within 30 months from the day of initiating the procedure issue a decision which, depending on the violation, may:
- 1) indicate the identified irregularities and set a deadline for their elimination,
  - 2) order the undertaking of appropriate measures and actions within the determined deadline,



- 3) issue a warning and publish it on its website.
- (2) The participant on the wholesale market is obliged to eliminate the determined irregularities or to take appropriate measures and actions within the deadline determined in the decision referred to in paragraph 1, points 1 and 2 of this Article.
- (3) If the Agency does not issue a decision within the time limit referred to in paragraph 1 of this Article, the procedure shall be suspended.
- (4) An administrative dispute may be initiated against the decision referred to in paragraph 1 of this Article.

## **Cooperation in performing surveillance of the wholesale market**

### **Article 17**

- (1) When performing surveillance of the wholesale market, the Agency shall cooperate with the body responsible for the protection of competition, the body responsible for the capital market, the competent bodies of the Energy Community, and the Agency for Cooperation of Energy Regulators.
- (2) The Agency is obliged to:
  - 1) notify the competent body of the Energy Community, if it suspects that transactions that endanger the functioning of wholesale markets are performed on the wholesale market in Montenegro or on the wholesale market of another member of the Energy Community;
  - 2) at the request of the competent body of the Energy Community, take measures for the purpose of submitting information related to transactions that have not been performed in accordance with this Law;
  - 3) submit to the competent body of the Energy Community:
    - data from the records of participants in the wholesale market referred to in Article 7, paragraph 1 of this Law;
    - annual report on wholesale market surveillance activities referred to in Article 14, paragraph 2 of this Law,
  - 4) notify the competent body of the Energy Community and submit the information referred to in paragraph 3, point 3 of this Article.
- (3) Notwithstanding paragraph 2, point 2 of this Article, the Agency may refuse to act upon the request, if:
  - 1) acting upon the request could endanger the sovereignty and security of Montenegro;

- 2) proceedings have already been initiated before the competent authorities in Montenegro in relation to the same actions and against the same natural or legal persons, or entrepreneurs to whom the request refers; or
- 3) a final judgment has been rendered in relation to legal or natural persons, or entrepreneurs to whom the request relates to the same actions in Montenegro.

## **Data protection and confidentiality**

### **Article 18**

In order to prevent unauthorized access and misuse of data during the surveillance of the wholesale market, the Agency shall ensure the protection of data received in accordance with Article 9, paragraph 3, Article 14, paragraph 1 and Article 15, paragraph 1, point 3 of this Law.

## **IV. PENALTY PROVISIONS**

### **Fines**

#### **Article 19**

- (1) A fine in the amount of EUR 5.000 to EUR 40.000 shall be imposed on a legal person for a misdemeanor, if:
  - 1) as a participant in the wholesale market, has not, before issuing an order to trade or realization of a transaction of purchase and/or sale of electricity or natural gas on the wholesale market, submitted an application to the Agency for entry in the register of wholesale market participants (Article 7 paragraph 2);
  - 2) fails to submit to the Agency the amended data from the application referred to in Article 7, paragraph 2 of this Law within 24 hours from the occurrence of the change of such data (Article 7, paragraph 3);
  - 3) does not publish within 24 hours from the occurrence of insider information, insider information referred to in Article 8 of this Law, using electronic systems of organizations that are on the list of the Agency for Cooperation of Energy Regulators (Article 9, paragraph 1, point 1);
  - 4) does not publish within 24 hours from the occurrence of inside information, complete inside information if it discloses part of the inside information related to a particular wholesale energy product during the normal performance of its activities using electronic systems of organizations listed by the Agency for Cooperation of Energy Regulators (Article 9, paragraph 1 point 2);

- 5) fails to notify the Agency within 24 hours from the occurrence of inside information, of the delayed publication of inside information and fails to submit inside information whose publication is delayed (Article 9, paragraph 2 and 3);
- 6) fails to notify the Agency within 24 hours from the execution of the transaction referred to in Article 10, paragraph 2 of this Law on the execution of that transaction (Article 10, paragraph 3);
- 7) participates in the market, and has no list of persons who have access to inside information (Article 11, paragraph 1);
- 8) does not regularly update the list referred to in Article 11, paragraph 1 of this Law, does not submit it to the Agency within 24 hours from the day of its compilation or update, or does not keep the list for at least six years from the day of its compilation or update (Article 11, paragraph 2);
- 9) attempts to perform a transaction or attempts to issue an order to trade in wholesale energy products, which provide or will provide untrue or misleading signals about the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 1, sub point a);
- 10) attempts to perform a transaction or attempts to issue an order to trade in wholesale energy products, which by the cooperation of participants in the wholesale market maintains or will maintain the price of one or more wholesale energy products at a level that does not correspond to the real situation on the wholesale market (Article 12 paragraph 1 point 1 sub point b);
- 11) attempts to execute a transaction or attempts to issue an order to trade in wholesale energy products, which mislead other participants in the wholesale market regarding the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 1, sub point c);
- 12) attempts to transmit information through the media, the Internet, or in any other way, which transmits untrue or misleading information about the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 2);
- 13) attempts to take actions by which the price of one or more wholesale energy products is maintained or is likely to be maintained at a level that does not correspond to the real situation on the wholesale market (Article 12, paragraph 1, point 3);
- 14) by the 15<sup>th</sup> of the current month for the previous month fails to submit to the Agency data on executed transactions in wholesale energy products, including data on purchased and sold wholesale energy products, price, and quantity of purchased and sold wholesale energy products, participants in executed transactions, date and time of execution of transactions (Article 13, paragraph 1, point 1);

- 15) does not keep records on published inside information referred to in Article 8 of this Law (Article 13, paragraph 1, point 2, sub point 1);
  - 16) does not keep records on executed transactions with wholesale energy products (Article 13, paragraph 1, point 2, sub point 2);
  - 17) upon request, does not provide the Agency with access to data, and documentation related to transactions and orders to trade in wholesale energy products (Article 13, paragraph 2, point 1);
  - 18) upon request, does not provide the Agency with the data, information and documents needed for market monitoring (Article 13, paragraph 2, point 2);
  - 19) upon request, does not provide the Agency with written statements regarding the execution of transactions and the issuance of orders to trade in wholesale energy products (Article 13, paragraph 2, point 3);
  - 20) upon request, does not provide the Agency with unhindered direct control in business premises (Article 13, paragraph 2, point 4);
  - 21) does not keep the records referred to in Article 13, paragraph 1, point 2, sub point 1 or Article 13, paragraph 1, point 2, sub point 2 of this Law on a permanent medium for at least six years (Article 13, paragraph 4);
  - 22) fails to eliminate the identified irregularities, i.e. fails to take appropriate measures and actions within the deadline specified in the decision referred to in Article 16, paragraph 1, point 1 and 2 of this Law (Article 16, paragraph 2).
- (2) For the misdemeanor referred to in paragraph 1, point 1 to 8, and point 14 to 21 of this Article, the responsible person in the legal entity shall also be fined from EUR 500 to EUR 4,000.
  - (3) For the misdemeanor referred to in paragraph 1, point 9 to 13 of this Article, the responsible person in the legal entity shall also be fined from EUR 100 to EUR 1,000.
  - (4) For the misdemeanor referred to in paragraph 1, point 1 to 8, and point 14 to 21 of this Article, the entrepreneur shall also be fined from EUR 1,500 to EUR 6,000.
  - (5) For the misdemeanor referred to in paragraph 1, point 9 to 13 of this Article, the entrepreneur shall also be fined from EUR 1,000 to EUR 3,000.
  - (6) For the misdemeanor referred to in paragraph 1, point 1 to 8, and point 14 to 21 of this Article, a natural person shall also be fined from EUR 500 to EUR 4,000.
  - (7) For the misdemeanor referred to in paragraph 1, point 9 to 13 of this Article, a natural person shall also be fined from EUR 100 to EUR 1,000.
  - (8) For the misdemeanor referred to in paragraph 1 of this Article, in addition to the penalty, a protective measure of prohibition to perform activities for a period of 30 days to six months may be imposed.

## Article 20

- (1) A fine in the amount of 5% to 10% of the total annual income in the financial year preceding the year when the misdemeanor was committed, shall be imposed on a legal entity, if:
  - 1) uses inside information when buying or selling, or attempting to buy or sell wholesale energy products to which that information relates, for its own account or for the account of a third party, directly or indirectly (Article 10, paragraph 1, point 1);
  - 2) transfers inside information to another legal or natural person, unless that information is necessary for the regular performance of activities (Article 10, paragraph 1, point 2);
  - 3) encourages another natural or legal person to buy or sell a wholesale energy product to which that inside information refers (Article 10, paragraph 1, point 3);
  - 4) perform transactions and issue orders to trade in wholesale energy products, which provide or will provide untrue or misleading signals about the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 1, sub point a);
  - 5) perform transactions and issue orders to trade in wholesale energy products, which by the cooperation of participants in the wholesale market maintains or will maintain the price of one or more wholesale energy products at a level that does not correspond to the real situation on the wholesale market (Article 12 paragraph 1 point 1 sub point b);
  - 6) executes transactions and issues orders to trade in wholesale energy products, by which other participants in the wholesale market are misled regarding the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 1, sub point c);
  - 7) transmits information through the media, the Internet, or in any other way, which transmits untrue or misleading information about the supply, demand, or price of wholesale energy products (Article 12, paragraph 1, point 2);
  - 8) take actions by which the price of one or more wholesale energy products is maintained or is likely to be maintained at a level that does not correspond to the real situation on the wholesale market (Article 12, paragraph 1, point 3).
- (2) For the misdemeanor referred to in paragraph 1 of this Article, the responsible person in the legal entity shall also be fined from EUR 500 to EUR 4,000.
- (3) For the misdemeanor referred to in paragraph 1 of this Article, the entrepreneur shall also be fined in the amount of 5% to 10% of the total annual income in the financial year preceding the year when the misdemeanor was committed.

- (4) For the misdemeanor referred to in paragraph 1 of this Article, a natural person shall also be fined from EUR 500 to EUR 4,000.
- (5) For the misdemeanor referred to in paragraph 1 of this Article, in addition to the penalty, a protective measure of prohibition to perform activities for a period of 30 days to six months may be imposed.

### **Obsolescence of initiating misdemeanor proceedings**

#### **Article 21**

- (1) The procedure for determining the violation of the provisions of this Law may not be initiated or conducted, if at least three years have elapsed from the day when the misdemeanor was committed.
- (2) The statute of limitations for misdemeanor prosecution arises when six years have elapsed from the day when the misdemeanor was committed.

### **V. TRANSITIONAL AND FINAL PROVISION**

#### **Deadline for entry in the register of participants in the wholesale market**

##### **Article 22**

Participants in the wholesale market are obliged to submit an application for entry in the register of participants in the wholesale market referred to in Article 7, paragraph 2 of this Law within three months from the date of entry into force of this Law.

#### **Entry into force**

##### **Article 23**

This Law shall enter into force on the eighth day from the day of its publication in the "Official Gazette of Montenegro".