Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to the European Union Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of the European Parliament and of the Council (Text with EEA relevance)

COMMISSION DECISION (EU) 2020/2152

of 17 December 2020

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(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators[(1)], and in particular Article 32(2) thereof,

Whereas:

(1) Open and fair competition in the internal electricity and gas markets and ensuring a level playing field for market participants requires integrity and transparency of wholesale energy markets. Regulation (EU) No 1227/2011 of the European Parliament and of the Council[(2)] establishes a comprehensive framework to achieve this objective.

(2) Regulation (EU) No 1227/2011 obliges the European Union Agency for the Cooperation of Energy Regulators, hereinafter the 'Agency', to monitor wholesale energy markets in order to ensure, in close cooperation with the national regulatory authorities and other national authorities, their effective oversight. Point (b) of Article 32(1) of Regulation (EU) 2019/942 introduces fees to improve the Agency's funding and to cover costs related to this monitoring and oversight function. Increased funding available to the Agency should also enable the Agency to improve the quality of the services provided by the Agency to entities reporting data and, if applicable, to market participants in general.

(3) The legislator sets out in Article 32 of Regulation (EU) 2019/942 the scope and the basic principles of the fee scheme and tasks the Commission with setting the fees and the way in which they are to be paid.

(4) In accordance with Article 32(2) of Regulation (EU) 2019/942, a public consultation took place and the Agency's Administrative Board and Board of Regulators were consulted. The public consultation was complemented by a stakeholder workshop to which all current potential addressees of the fee scheme were invited as well as associations representing those addressees or other market participants.

Changes to legislation: *There are currently no known outstanding effects for the Commission Decision (EU) 2020/2152. (See end of Document for details)*

(5) Commission Delegated Regulation (EU) 2019/715[(3)] establishes the framework financial regulation for the bodies which are set up by the Union under the Treaty on the Functioning of the European Union and the Treaty establishing the European Atomic Energy Community and which have legal personality and receive contributions charged to the Union budget. The Agency is such a body and, as required by Delegated Regulation (EU) 2019/715, adopted its own financial rules, the Financial Regulation of the Agency[(4)], which do not depart from those pursuant to Delegated Regulation (EU) 2019/715.

(6) The Agency's programming document, established in accordance with Article 20 of Regulation (EU) 2019/942 and Article 32 of the Financial Regulation of the Agency, contains annual and multi-annual programming and in this context sets out in detail the Agency's tasks and the resources deployed for those tasks. The programming document is therefore the appropriate tool to identify those costs which are eligible to be covered by fees pursuant to point (b) of Article 32(1) of Regulation (EU) 2019/942.

(7) Eligible costs should include those incurred by the Agency for collecting data in accordance with Commission Implementing Regulation (EU) No 1348/2014[(5)], but also every other task or activity pursuant to Regulation (EU) No 1227/2011 involving handling, processing and analysing of the collected data in order to ensure integrity and transparency of wholesale energy markets. In accordance with Article 20 of Regulation (EU) 2019/942, the Commission provides an opinion on the Agency's draft programming document, including the Agency's proposals as regards which costs are considered as eligible for funding by fees.

(8) In accordance with Article 31 of Regulation (EU) 2019/942, the Agency should be mainly financed from the general budget of the Union. Therefore, fee income should not exceed the contribution to the Agency from the Union budget.

(9) In order to provide transparency that fees are only used to cover eligible costs and that the Agency remains to be mainly financed by the general budget of the Union, the Consolidated Annual Activity Report, established in accordance with Article 48 of the Financial Regulation of the Agency, should provide information about the different sources of revenue received and the use of this revenue.

(10) Market participants are to be registered with Member States' regulatory authorities in accordance with Article 9 of Regulation (EU) No 1227/2011. Reporting parties, also called registered reporting mechanisms, are market participants, or entities reporting on behalf of market participants, which fulfil the technical and organisational requirements to ensure efficient, effective and safe exchange and handling of information for the purpose of reporting information pursuant to Article 8 of Regulation (EU) No 1227/2011 and to Implementing Regulation (EU) No 1348/2014. Registered reporting mechanisms are to be registered directly with the Agency, therefore, it is them who should pay the fees.

(11) The invoices sent to the registered reporting mechanisms should include information about how the fee was calculated to make it transparent to the registered reporting mechanism how the different market participants it is reporting data for contribute to the

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invoiced fee. To avoid an undue financial burden for registered reporting mechanisms, it should be possible that large invoices are paid in instalments in agreement with the Agency. Deciding to which extent electricity or gas transmission system operators who are registered reporting mechanisms can recover costs incurred by having to pay the fees due to the Agency from network users via network tariffs is part of the duties and powers of Member States' regulatory authorities pursuant to Article 59(1) of Directive (EU) 2019/944 of the European Parliament and of the Council[(6)] and Article 41(1) of Directive 2009/73/EC of the European Parliament and of the Council[(7)].

(12) In accordance with Article 32(2) of Regulation (EU) 2019/942, the fees should be proportionate to the costs of the relevant services as provided in a cost-effective way and be sufficient to cover those costs and they should be set at such a level as to ensure they are non-discriminatory and avoid placing an undue financial or administrative burden on market participants or entities reporting on their behalf.

(13) The main cost drivers of the relevant services, and hence of the Agency's eligible costs, are the number of registered reporting mechanisms, the number of market participants they report for and the amount and the characteristics of the data they report. In order to reflect those cost drivers, the fee each registered reporting mechanism needs to pay should be a combination of a flat amount, the flat enrolment fee component, and a variable amount, the transaction records-based fee component, depending on the number of market participants for which the registered reporting mechanism is reporting data as well as the amount and the characteristics of the reported data.

(14) The flat amount should reflect the Agency's costs for processing applications for registration as registered reporting mechanisms as well as for ensuring continued compliance of already registered reporting mechanisms with the requirements set out in Article 11 of Implementing Regulation (EU) No 1348/2014. Since those costs are incurred by the Agency regardless of whether registered reporting mechanisms report transaction records or fundamental data, the flat amount should be paid by all registered reporting mechanisms.

(15) In order to avoid setting an undue financial burden on registered reporting mechanisms, the variable amount referred to in Article 6 should reflect the amount of reported transaction records, which is linked to the volume of trading and hence the potential revenues of a registered reporting mechanism. The variable component should take account of the fact that many registered reporting mechanisms report data for a multitude of market participants that are often active on several organised market places and are using different trading channels.

(16) Points (b) and (c) of Article 4(1) of Implementing Regulation (EU) No 1348/2014 exclude small electricity and gas producers, who are often renewable energy producers, from continuous reporting under Regulation (EU) No 1227/2011. Introducing the fees should therefore not create a financial burden for such producers.

(17) Fundamental data like information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity and natural gas or related to the capacity and use of LNG facilities, is only collected by the Agency to complement the collected transaction records like orders, trades, non-standard contracts

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or transportation contracts. Fundamental data should therefore not be included in the calculation of the variable fee component. Since the status of a registered reporting mechanism as such is a significant cost driver for the Agency, registered reporting mechanisms reporting fundamental data should nevertheless pay the flat fee component.

(18) In order to effectively uncover market abuses, the Agency does not only collect data on trades and other contracts, but also a considerable amount of data on orders to trade placed on organised market places like energy exchanges. Therefore, also orders to trade should be covered by the fee scheme in order to ensure cost proportionality. For the same reasons, lifecycle information should be covered by the fee scheme as well.

(19) The fee scheme should not discriminate against trading at organised market places. Trading of wholesale energy products in relation to the supply of electricity or natural gas at organised market places is characterised by a higher level of standardisation than the trading of such products outside organised market places. Moreover, reported transaction records stemming from organised market places include orders to trade. Market developments in the trading of contracts for the supply of electricity or natural gas like algorithmic and high frequency trading are gaining in importance resulting in an increasing number of orders to trade being reported from organised market places per standard supply contract compared to supply contracts concluded outside organised market places. Transaction records on wholesale energy products in relation to the supply of electricity or natural gas stemming from organised market places should therefore be weighted differently than those stemming from outside organised market places when calculating the variable fee component.

(20) Wholesale energy products in relation to the transportation of electricity or natural gas are characterised by a similar level of standardisation of contracts, regardless of whether traded outside or at organised market places, and there is limited competition between trading at organised market places and trading outside organised market places. In the case of such products, the fee scheme should therefore not differentiate between transaction records stemming from organised market places and those stemming from outside organised market places.

(21) Since the fees are entirely determined by this Decision, which is the basis for the Agency establishing the amounts receivable, in accordance with Article 71 of the Financial Regulation of the Agency the invoices should be debit notes.

(22) Pursuant to Article 71 of the Financial Regulation of the Agency, an agency is only to provide services after the corresponding fee has been paid in its entirety. Since the fees are calculated on the basis of the amount of transaction records reported in the previous year, the amounts receivable can only be established and invoices be sent out at the beginning of each year. Registered reporting mechanisms should nevertheless be able to continuously report data to the Agency, hence also prior to them having paid the invoice for the respective year. However, should a registered reporting mechanism be overdue with paying the invoice, the Agency should have the possibility to stop the entity's ability to report data, despite it being registered pursuant to Article 11 of Implementing Regulation (EU) No 1348/2014.

(23) Year 2021 should be the first year when registered reporting mechanisms need to pay fees to cover the eligible costs identified in the programming document to be adopted by the Agency's Administrative Board by 31 December 2020 pursuant to Article 20 of Regulation (EU) 2019/942.

(24) At the start of the fee scheme, registered reporting mechanisms should have the possibility to consider whether they would like to maintain their registration with the Agency. Therefore, they should be able, even after receiving the invoice over the annual fee, to avoid having to pay the fee by informing the Agency that they wish to cease being a registered reporting mechanism. In that case, they should have time to implement alternative solutions for fulfilling their obligations under Regulation (EU) No 1227/2011, for example by using the services of another registered reporting mechanism. In the coming years after the first year, registered reporting mechanisms should be able to decide before the end of each year if they would like to maintain this status or not and not be entitled to any reimbursement of fees paid or waiving of fees due.

(25) Article 32(2) of Regulation (EU) 2019/942 requires the Commission to regularly examine the level of the fees. This should be done together with the evaluations of the Agency's performance pursuant to Article 45 of Regulation (EU) 2019/942. Such a requirement does not prevent the Commission from revising the fee scheme independently of those evaluations.

(26) This Decision should enter into force on the third day after its publication as the Agency's programming document for 2021-2023 referred to in Articles 3(1) and 3(2) is to be adopted in December 2020. Since 2021 should be the first year registered reporting mechanisms need to pay fees, this Commission Decision, except for its Articles 3(1) and 3(2), should not be applied from its entry into force, but from 1 January 2021,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision sets the fees and the way in which they are to be paid to the European Union Agency for the Cooperation of Energy Regulators, hereinafter the 'Agency', for collecting, handling, processing and analysing of information reported by market participants or by entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011.

Article 2

Definitions

For the purposes of this Regulation, the definitions of 'fundamental data' and 'organised market place' as laid down in Article 2(1) and 2(4) of Implementing Regulation (EU) No 1348/2014 shall apply.