



Energy
Community
Secretariat

Ukraine Energy Market Observatory

On the termination of the data publication in the electricity market of Ukraine

Assessment 2/25

April 2025

Purpose statement

Assessment of the termination of the data publication in the electricity market of Ukraine in the context of Ukraine's obligations under the Energy Community acquis and its impact on the electricity market functioning and its further reform.

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1. Introduction

On 30 December 2024, the operator of day-ahead and intraday markets, the Market Operator, and the operator of commodity exchange organizing the trading of electricity via electronic auctions, Ukrainian Energy Exchange (hereinafter, UEEX), both notified on their websites about the termination of the data publication on the respective market segments.

The Market Operator's statement¹ was very general on the reason and legal background of such termination, stating, with a reference to martial law in Ukraine, that the termination of the publication of information on electricity trading on the day-ahead and intraday markets on its website and Telegram channel is aimed at protecting the enemy's attempts to destroy the Ukrainian energy infrastructure. Following this, the Market Operator has stopped the publication of the actual and historical information related to the trading results on the day-ahead and intraday markets (hereinafter, DAM and IDM) – volumes, prices, and regular market overviews (published by the Market Operator on a 10-day basis). The access to the registry of DAM and IDM participants, to the structure of the electricity sold on DAM and IDM by different types of producers (i.e. NPP, RES, TPP, HPP, etc.), as well as to the structure of the types of participants who sold/bought electricity on the DAM/IDM (i.e. traders, producers, suppliers, consumers) was also disabled.

UEEX statement² provided more details indicating that due to the continuation of the special legal regime of martial law in Ukraine, according to the order of the Minister of Energy of Ukraine (in his role as the Head of works on elimination of the consequences of the state-level military emergency in electric power systems) No. 27-dsk dated 27 December 2024, auction bulletins, and bulletins of weighted average prices are not available for review on the website of UEEX³ for the period of martial law and until the last day of the month following the month of termination or cancellation of martial law.

¹ <https://www.oree.com.ua/index.php/newsctr/n/26150>

² <https://www.ueex.com.ua/presscenter/news/prypynennya-publikatsii-auktsionnyh-buleteniv-ta-buleteniv-sered/>

³ which included detailed information on bilateral auctions, in particular information about the initiator of the auction, the delivery period and volumes (including lots), starting and resulted prices, etc.

On 31 December 2024, the Market Operator resumed⁴ the publication of the DAM and IDM prices, in particular – the hourly DAM/IDM prices⁵ and the daily/monthly DAM/IDM indices (base, peak, off-peak),⁶ but did not resume the publication of the hourly volumes of the DAM/IDM trading results.

On 6 January 2025, the Committee on Energy and Housing and Communal Services (hereinafter, the Committee) discussed the termination of data publication in the electricity market, and members of the Committee expressed concerns about the legality of this decision⁷ and decided to invite representatives of the Market Operator to the Committee meeting scheduled on 9 January to clarify all details.

During the Committee meeting on 9 January, some clarifications were provided by the General Director of the Market Operator.⁸ In particular, it was clarified that the termination of data publication on the Market Operator's website was made based on the order No. 27-dsk of the Minister of Energy (in his role as a Head of works on elimination of the consequences of the state-level military emergency in electric power systems). The order No. 27-dsk was adopted based on Article 75(8) of the Civil Defense Code of Ukraine⁹ (hereinafter, the Civil Defense Code)¹⁰, and is binding for the execution for those organizations to which it is addressed (i.e., for the Market Operator and the UEEEX).

Additionally, it was specified that order No. 27-dsk was amended, which allowed the Market Operator to resume the publication of the DAM/IDM trading volumes on its website.¹¹ It was also clarified that the publication of some data has not been resumed.¹² It was highlighted by the Market Operator that the information is not accessible on the website but is available for DAM and IDM registered participants. It was further emphasized that the Civil Defense Code has a higher legal hierarchy level than the relevant sectoral legislation (in particular, the Law “On the Electricity Market” and energy-related secondary legislation).

UEEX's representative informed during the Committee meeting that they are not aware of any amendments to order No. 27-dsk. In the meantime, it was communicated that the information on price indices (DAM indices, weighted average prices) and load schedules had not been closed on the UEEEX

⁴ Information from the TG channels and the FB

⁵ <https://www.oree.com.ua/index.php/pricetr?lang=english>

⁶ <https://www.oree.com.ua/>

⁷ Mr. Kucherenko (Member of the Ukrainian Parliament and member of the Committee) informed that he, as a Head of the temporary investigative commission, appealed to the NEURC and JSC „Market Operator“ for clarification. And if a full justification will not be provided, he would suggest addressing law enforcement agencies and the Ministry regarding immediate personnel decisions.

⁸ https://www.youtube.com/watch?v=6Hltx9_Mc60

⁹ Law No.5403-VI dd 02.10.2012, <https://zakon.rada.gov.ua/laws/show/5403-17#Text>

¹⁰ Amendments to the Regulation on the State Commission for Technogenic and Environmental Safety and Emergency Situations, approved by Resolution of the Cabinet of Ministers of Ukraine No.18 dd 26.01.2015, <https://zakon.rada.gov.ua/laws/show/1025-2022-%D0%BF#Text>

¹¹ https://www.oree.com.ua/index.php/control/results_mo/DAM; https://www.oree.com.ua/index.php/control/results_mo/IDM

¹² the structure of the electricity sold in the DAM/IDM by different types of producers (i.e. NPP, RES, TPP, HPP, etc.), the structure of the types of participants who sold/bought electricity in the DAM/IDM (i.e. producers, suppliers, traders, consumers)

website. It shall be highlighted that the participants registered for participation in electronic auctions (as well as “observers”¹³) have access to the details of auctions via their accounts.

This report provides the analysis of the national legislation governing the data publication issues and the national legislation, based on which the decision on the termination of publication of the information was made, whether such decision constitutes non-compliance with the Energy Community acquis; it provides the market impact assessment and compliance assessment, as well as the recommendations for ensuring the predictability of the decision-making process in the electricity market of Ukraine, taking into account the current state of martial law.

2. Legal background

a) *Energy Community acquis*

Several legal acts adopted in the Energy Community impose obligations to ensure the transparency of the electricity market functioning and to publish certain sets of data.

Regulation (EU) 2019/943 on the internal market for electricity (hereinafter, the Electricity Regulation)¹⁴ establishes that the DAM and IDM should be organised in such a way as to be non-discriminatory, facilitate imbalance management and cross-zonal trading, provide reliable market-reflective pricing, including the real time value of energy, on which market participants are able to rely when agreeing on longer-term hedging products, ensure operational security and maximum transmission capacity use, maintain transparency while protecting confidentiality, treat intra- and inter-zonal trades equally, and allow all participants equal market access.¹⁵

Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management (hereinafter, the CACM Regulation)¹⁶ aims at ensuring and enhancing the transparency and reliability of information¹⁷, and requires nominated electricity market operators (hereinafter, NEMO) to publish the results from the DAM and IDM. The NEMOs’ tasks¹⁸ include the obligation to receive orders from market participants, have overall responsibility for matching and allocating orders in accordance with the single day-ahead and intraday coupling results, publish prices and settle and clear the contracts resulting from the trades according to relevant participant agreements and regulations. Each NEMO shall publish for relevant market participants at least the status of execution of orders and prices per trade produced by the continuous trading matching algorithm¹⁹ and ensure that information on aggregated

¹³ authorised person of the NEURC and NSSMC, another state authority or an information and analytical publishing house, intergovernmental and public organizations, who has the access to the UEEX system based on the [Procedure](#) approved by the Exchange Committee, but does not have the possibility to initiate auctions; limited to the Ukrainian citizens only

¹⁴ as adapted and adopted by the Ministerial Council Decision No. 2022/03/MC-EnC, https://www.energy-community.org/dam/jcr:d5a1a894-88db-4326-818b-f2c648bd237e/Decision03-2022-MC_newELacquis_15-12-2022.pdf

¹⁵ Article 7 of the Electricity Regulation

¹⁶ as adapted and adopted by the Ministerial Council Decision 2022/03/MC-EnC of 15 December 2022

¹⁷ Article 3(f) of the Commission Regulation (EU) 2015/1222

¹⁸ based on Article 7 of the CACM Regulation

¹⁹ Article 62(1) of the CACM Regulation

executed volumes and prices is made publicly available in an easily accessible format for at least 5 years.²⁰

Regulation (EU) 1227/2011 on wholesale market integrity and transparency (hereinafter, REMIT)²¹ establishes a strong basis for the publication of information that is considered fundamental for the market. Furthermore, REMIT defines certain information as inside information and requires market participants to publish it.²²

The DAM and IDM results (particularly the prices) are defined as fundamental information and it is considering the transparency requirements under other regulations, thus such information falls within the definition of "inside information" under REMIT.²³

The information regarding the auction results through which state-owned companies sell electricity on a forward basis, is likely considered inside information under REMIT, specifically under points (c) and (d) of the inside information definition. Taking into account that the publication of such information was a market practice in Ukraine, market participants are likely to use it in trading, therefore, to comply with REMIT, this information should be published.

Articles 3 and 4 of REMIT prohibit trading on the basis of inside information and require market participants owning such information to publish it as soon as such information fulfills the conditions under the definition of "inside information". Based on this, market participants that possess information referred to above, which is not published, risk being charged for insider trading.

In line with Article 3(4)(c) of REMIT, rules related to the prohibition of insider trading do not apply to 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

²⁰ Article 62(2) of the CACM Regulation

²¹ As adapted and adopted by the Ministerial Council Decision 2018/10/MC-EnC, https://www.energy-community.org/dam/jcr:aec217c0-51fa-426a-a986-f36455546f51/Decision_2018_10_MC-EnC_Reg_1227-2011.pdf

²² Article 2.1 of REMIT defines the inside information as follows:

(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 Energy Community 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.

²³ Points (a) and (c) of the definition of "inside information"

Contracting Party or parts thereof. In this case the authority competent for emergency planning shall ensure publication in accordance with Article 4 of REMIT.

Additionally, Article 12(1)(d) and 12(2)(d) of Regulation (EU) 543/2013 on submission and publication of data in electricity markets (hereinafter, the Transparency Regulation)²⁴ requires that the transmission system operator (hereinafter, TSO) shall provide to the ENTSO for Electricity for every market time unit the day-ahead prices²⁵ in each bidding zone, and this information shall be published no later than one hour after gate closure.

Moreover, Directive (EU) 2019/944 on common rules for the internal market for electricity (hereinafter, the Electricity Directive)²⁶ contains general requirements for the publication of data and information. Article 60(4) thereof obliges Contracting Parties to create appropriate and efficient mechanisms for regulation, control and transparency so as to avoid any abuse of a dominant position, in particular to the detriment of consumers, and any predatory behavior. Those mechanisms shall take account of the provisions of the Energy Community Treaty. Article 59(1)(n) foresees that the national regulatory authority shall have the duty to monitor the level of transparency, including wholesale prices, and ensure the compliance of electricity undertakings with transparency obligations.

The Energy Community acquis defines additional provisions for the intervention into the market processes under specific conditions.

Regulation 2019/941 on risk-preparedness in the electricity sector (hereinafter, the Risk Preparedness Regulation)²⁷ contains rules for the assessment of relevant risks relating to security of electricity supply and measures that are planned to be taken or taken to prevent, prepare for and mitigate electricity crises, represented in the risk-preparedness plan. Those measures shall fully comply with the rules governing the internal electricity market and system operation, be clearly defined, transparent, effective, proportionate and non-discriminatory.²⁸

Additionally, Commission Regulation 2017/2196 establishing a network code on electricity emergency and restoration (hereinafter, the ER NC)²⁹ provides the legal basis for the procedure for the suspension of market activities in cases when the power system faces a blackout state or other significant system events under the state of emergency, and the continuation of market activities would decrease significantly the effectiveness of the restoration process to the normal or alert state.

Most of the acts listed above³⁰ have not been transposed in Ukraine, although the transposition deadline has expired on 31 December 2023.

²⁴ As adapted and adopted in the Energy Community by the Decision of the Permanent High Level Group of the Energy Community No 2015/01/PHLG-EnC of 24 June 2015, https://www.energy-community.org/dam/jcr:dad276cb-5eee-4884-b44a-5d40a9682243/Decision_2015_01_PHLG_EL.pdf

²⁵ in Currency/MWh

²⁶ As adapted and adopted in the Energy Community by the Ministerial Council Decision 2022/03/MC-EnC

²⁷ As adapted and adopted by the Decision of the Ministerial Council of the Energy Community 2021/13/ MC-EnC of 30 November 2021

²⁸ Article 10(1) of the Risk Preparedness Regulation

²⁹ as adapted and adopted by the Ministerial Council Decision 2022/03/MC-EnC

³⁰ which are part of Electricity Integration Package

b) National legislation

• **regarding powers to adopt the decisions under the legal regime of martial law**

According to Article 8 of the Law of Ukraine on the legal regime of martial law³¹, the military command together with military administrations (if established) may independently or with the involvement of executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, and local self-government bodies introduce and implement, within the limits of temporary restrictions on constitutional rights and freedoms of man and citizen, as well as the rights and legitimate interests of legal entities, provided for by the decree of the President of Ukraine on the introduction of martial law, the measures³² of the legal regime of martial law. The list of such measures does not list the limitations of information publishing specifically. While not applicable in the present situation, it is worth mentioning that some limitations as to the right to access information are mentioned with regard to electronic communications. As indicated above, the Market Operator has referred to the order of the Minister of Energy No. 27-dsk adopted based on Article 75(8) of the Civil Defense Code. As order No. 27-dsk is a restricted document, assessing the legal basis based on which the decision on the termination of the data publication was made is not possible.

The Civil Defense Code itself relates to the protection of the population, territories, environment and property from emergencies, fires and other hazardous events, response to them, and functioning of the unified state civil protection system, and defines the powers of the Cabinet of Ministers of Ukraine, ministries, other central executive state authorities that are not part of the system of central executive authorities, the Council of Ministers of the Autonomous Republic of Crimea, local state administrations, local self-government bodies, establishes the rights and obligations of Ukrainian citizens, foreigners and stateless persons, enterprises, institutions, and organizations regardless of their form of ownership (hereinafter referred to as business entities), as well as other legal entities. Article 75(8) envisages that the decision of the head of the emergency response is formalized by an order and is obligatory for all entities involved in the disaster response, as well as for citizens and business entities located in the disaster area. The head of the emergency response is appointed by the Cabinet of Ministers of Ukraine. The appointment can be made from the list of the First Vice Prime Minister, Vice Prime Minister or head of one of the central executive authorities or his/her first deputy (deputy). According to Article 2 of the Resolution of the Cabinet of Ministers No.1025 dated 13 September 2022³³, the Minister of Energy was appointed as the head of the elimination of the consequences of a state-level military emergency in the electricity systems.

³¹ Law No.389-VIII dd 12.05.2015, <https://zakon.rada.gov.ua/laws/show/389-19#Text>

³² The list of such measures is exhausting and pertains to the protection of critical infrastructure facilities, introduction of labour duties, usage of enterprises capacities for defense needs, alienation of property, introduction of curfew, limitations with regard to freedom of movement and the right for peaceful protests, prohibition of civil organisations or political parties activities if they threaten state's independence, security etc., managing activities of electronic communication networks and similar entities, prohibition of weapons trade, certain limitations towards entities with regard to reduction of particular substances reserves, conducting evacuation of population, property, including cultural, implementation of additional measures related to the protection of secret state information, construction of protective facilities and other measures foreseen by the norms of humanitarian law.

³³ <https://zakon.rada.gov.ua/laws/show/1025-2022-%D0%BF#Text>

In line with Article 75(7) of the Civil Defense Code, the decisions of the head of the emergency response may concern the following:

- implementation of evacuation measures;
- suspension of activities of business entities located in the emergency zone and restriction of public access to such zone;
- engaging, in accordance with the established procedure, necessary vehicles and other property of business entities located in the emergency zone, emergency services, as well as citizens with their consent, in emergency rescue and other urgent works;
- suspension of emergency rescue and other urgent works if there is an increased threat to the life or health of rescuers and other persons involved in the liquidation of the consequences of emergency situations;
- other decisions necessary to eliminate the consequences of the emergency and ensure the safety of the victims.

At the same time, there are no indications that the order No. 27-dsk has been directed at one of the described situations. It also remains unclear what emergency situation was supposed to be resolved by the minister's order under the Civil Defense Code since no emergency situation was declared in the Ukrainian energy system.

- **regarding the security of electricity supply**

As noted above, Ukraine has not yet transposed the Risk Preparedness Regulation. The provisions on the security of electricity supply in the Law of Ukraine “On the Electricity Market” (hereinafter, the Electricity Market Law)³⁴ transpose provisions of the Directive 2005/89/EC concerning measures to safeguard security of electricity supply and infrastructure investment. In particular, Article 16 of the Electricity Market Law³⁵ mandates the Ministry of Energy to approve the Rules on Security of Electricity Supply, which are binding for all market participants. These Rules establish criteria and types of violations for the security of electricity supply and determine measures (preventive and ex post facto) for ensuring the security of electricity supply. They also establish the procedure for activation of relevant measures and involved stakeholders (including the NEURC and TSO). The decision on the application of measures to overcome violations of the security of electricity supply and minimize their consequences shall be published no later than the next day on the official website of the Ministry of Energy and/or through official media. The Ministry of Energy shall immediately inform the Energy Community Security of Supply Coordination Group on those measures.

- **regarding the data publication in the DAM and IDM**

Articles 51(3)(7) and 67(6) of the Electricity Market Law mandate the Market Operator to publish the DAM and IDM trading information, including prices and volumes, as specified in the Day-Ahead and Intraday Markets Rules (hereinafter, the DAM/IDM Rules).³⁶

³⁴ Law No.2019-IX dd 13.04.2017, <https://zakon.rada.gov.ua/laws/show/2019-19#Text>

³⁵ Order of the Ministry of Energy No.448 dd 27.08.2018, <https://zakon.rada.gov.ua/laws/show/z1076-18#Text>

³⁶ Adopted by the NEURC Resolution No. 308 dd 14.03.2018, <https://zakon.rada.gov.ua/laws/show/v0308874-18>

Paragraph 1.7.10 of the DAM/IDM Rules obliges the Market Operator to disclose information that is not confidential, and specifies such information, which is in particular: the registry of the DAM/IDM participants; notification of the time and procedure for conducting trades; results of trades in the DAM in aggregated form (hourly prices and volumes of purchase and sale of electricity in the DAM); results of trades in the IDM in aggregated form; aggregated price indicators (indices) of the work of the DAM/IDM; reports on the results of the DAM/IDM operation and on the Market Operator's activities.

The Licensing Conditions for conducting economic activities to perform the functions of a market operator³⁷ specifies that when conducting licensed activities, the licensee (Market Operator) should comply with certain organizational requirements, in particular: adhere to the principles of transparency, objectivity and independence; ensure the functioning of its own website, which should provide organizational opportunities for participation in the DAM and IDM, and publish information on participation and operation of the DAM and IDM³⁸; comply with the requirements for the provision, protection, disclosure and publication of information on the electricity market.³⁹

- **regarding the data publication in the bilateral contract market**

As regards the data publication of the bilateral contracts, the Procedure for holding electronic auctions for the sale of electricity under bilateral contracts⁴⁰ (hereinafter, the Procedure for holding electronic auctions) obliges the auction organizer (UEEX): post on its official website announcements about holding/cancelling auctions and information about their results; ensure that all auction participants have free access to information about lots offered for sale at the auction in real time 24 hours a day, seven days a week; post on its official website information about the weighted average prices and the volume of electricity sold based on the results of each auction.

Paragraph 17 of the Procedure for holding electronic auctions also obliges the auction organizer to disclose information about the auctions held and their results within the framework of the legislation, in particular, the following information: the list of auction participants admitted to conclude contracts based on the results of the auctions held; the list of electronic auctions; the volume of electricity trade (the range of products, their total cost according to the concluded contracts, quotes for each product).

- **regarding transparency and integrity on wholesale energy market**

REMIT was transposed into the national legislation by the Law of Ukraine "On Amendments to Certain Laws of Ukraine on Preventing Abuse in Wholesale Energy Markets" (hereinafter, the REMIT Law). The implementation of the REMIT Law is ensured by a number of NEURC's secondary legal acts. In particular, the Requirements for ensuring integrity and transparency introduced the obligation to publish inside information on the wholesale energy market, provide the criteria for assessing whether the information

³⁷ NEURC Resolution No. 1466 dd 27.12.2017, <https://zakon.rada.gov.ua/laws/show/v1466874-17#Text>

³⁸ the registry of DAM/IDM participants; information on trading in the DAM and IDM, in particular (prices and volumes of electricity purchase and sale, and other information in the volumes and within the terms specified by the DAM/IDM Rules); reports on the results of the assessment of significant risks that may affect operations in the DAM and IDM, and the results of licensed activities in the performance of the functions of the Market Operator and measures to manage such risks; analytical materials using aggregated data on trading in the DAM and IDM

³⁹ as defined by the Electricity Market Law, the Day-Ahead and Intraday Markets Rules, and other regulatory legal acts regulating the functioning of the electricity market

⁴⁰ approved by the CMU Resolution No.499 dd 05.06.2019, <https://zakon.rada.gov.ua/laws/show/499-2019-%D0%BF#Text>

shall be classified as inside, and also an indicative (non-exhaustive) list of inside information per type of market participant. These requirements are obligatory for all wholesale market participants, including organised marketplaces (including the Market Operator and UEEX). For the Market Operator, Annex 3 of these requirements clearly provides the obligation to publish (as inside information) the notification of the publication of trading results. Additionally, the Market Operator shall provide to the Inside Information Platform the notification on acts of individual action adopted by competent authorities that may affect the wholesale energy product and/or are adopted to ensure security of supply.

The Transparency Regulation was transposed by the NEURC Resolution⁴¹ in 2018, and its implementation was partially suspended due to martial law.

- **regarding competences of the Ministry of Energy and NEURC**

According to Article 1 of the Regulation on the Ministry of Energy of Ukraine⁴², the Ministry develops and implements the state policy in the electric power sector, as well as ensures that the public is informed on the latter.⁴³ The Ministry of Energy participates in the implementation of the state policy in the sphere of civil defense, and for these purposes it takes some measures.⁴⁴ To this end, the Ministry of Energy does not have functions and competences related to publication of market data. At the same time, its tasks include civil defense policy, which is relevant during martial law and emergencies.

The Law on NEURC⁴⁵ in Article 17 defines the tasks and powers of NEURC. It stipulates that NEURC makes binding decisions on issues within its competence. Further, the Law on NEURC and the Electricity Market Law define that the DAM/IDM Rules, which, in particular, include requirements for the publication of information by the Market Operator, are subject to approval by NEURC.

NEURC is also responsible for defining the requirements for the protection, provision, disclosure and publication of information by electricity market participants (wholesale energy market participants), as well as by persons who professionally organize transactions with wholesale energy products⁴⁶. Following the introduction of martial law in Ukraine,⁴⁷ NEURC adopted Resolution No. 349 "On the protection of information that, under martial law, may be classified as restricted information, including information regarding critical infrastructure facilities"⁴⁸ (hereinafter, the Resolution No.349). In particular, Article 1(2) of Resolution No.349 lists information that can be restricted during martial law and shall not be publicly available on the websites of licensees and/or wholesale market participants, including the derogation from requirements of various NEURC's regulations⁴⁹ to publish particular information by market participants.

⁴¹ NEURC Resolution No.459 dd 19.06.2018, <https://zakon.rada.gov.ua/rada/show/v0459874-18#n14>

⁴² approved by the CMU Resolution No.507 dd 17.06.2020, <https://zakon.rada.gov.ua/laws/show/507-2020-%D0%BF#Text>

⁴³ paragraph 3(55) of the Regulation

⁴⁴ paragraph 3(45) of the Regulations foresees that the Ministry of Energy establish and manage a civil defense subsystem, overseeing emergency response teams, planning for protective structures, approving risk categorization of energy sector businesses (with the State Emergency Service), and ensuring safety regulations are met at high-risk facilities to prevent accidents.

⁴⁵ Law No. 1540-VIII dd 22.09.2016, <https://zakon.rada.gov.ua/laws/show/1540-19#Text>

⁴⁶ Article 6 of the Electricity Market Law

⁴⁷ as a result of Russia's unprovoked and unjustified military aggression against Ukraine on 24 February 2022

⁴⁸ Resolution No.349 dd 26.03.2022, <https://zakon.rada.gov.ua/rada/show/v0349874-22>

⁴⁹ for example, some provisions of the Distribution Network Code

In addition, NEURC adopted Resolution No. 614 “On Requirements for ensuring integrity and transparency in the wholesale energy market” which obliges market participants to provide inside information to the Inside Information Platforms (IIP) and by the same decision NEURC obliged the IIPs to close such information for public access for the period of martial law.

Following the defined powers of NEURC, any decision regarding the derogations from the provisions of DAM/IDM Rules on the publication by DAM/IDM-related information shall be taken solely by NEURC with the relevant reasoning and justification to allow for judicial review. The decision shall be available to the public without prejudice to preserving the confidentiality of commercially sensitive information.⁵⁰

3. Market impact assessment

The termination of the data publication that has historically been published and which has been used by market participants rely on for the contract settlements and operational planning leads to the operational challenges. This creates information asymmetry, distorting competition by giving insiders advantages, diminishing market trust and efficiency, and increasing the risk of insider trading and market abuse.

Ukrainian DAM/IDM were overregulated with price caps and other limitations⁵¹ even before martial law. With the start of the full-scale invasion, Ukraine retained the operation of the electricity market, and despite constant attacks on energy infrastructure and several blackouts, market rules were not crucially changed during these years. At the same time, interventions in the electricity market functioning during martial law were introduced by various non-public orders of the Ministry of Energy, NEURC Resolution related to the market functioning under the regime of martial law⁵², separate decisions on the introduction of new public service obligations⁵³.

The electricity market has already been operating under limited access to market-important information. Many types of information, mainly related to the operation of critical energy infrastructure, have been already closed for public and market participants with aim to avoid its usage by Russia to damage or destroy relevant objects. This relates also the inside information, for example on planned and unplanned availability/non-availability of generation units and network elements, which is now publicly non-disclosed and, in fact, relevant REMIT tool is not accessible by market participants for making trading decisions in the market.

Publication of data on the Transparency Platform of ENTSO for Electricity⁵⁴ also was put on hold due to martial law but partially resumed for information not related to the state of the critical infrastructure.

The latest event of the termination of the publication of trading results from DAM/IDM and bilateral contracts market segments caused significant concerns among the electricity market participants and different stakeholders as public access to the DAM price information is crucial for Ukraine's electricity

⁵⁰ Article 60(7) of the Electricity Directive

⁵¹ for example, by virtue of the COVID Regulation, household PSO and Procedure for holding electronic auctions which in different periods imposed additional restrictions for the activities of certain market participants on different market segments

⁵² NEURC Resolution No.332 dd 25.02.2022, <https://zakon.rada.gov.ua/rada/show/v0332874-22#Text>

⁵³ so-called “export public service obligation” (obliging exporters to transfer 80% of their profit to the guaranteed buyer to cover the deficit of universal service suppliers) or “coal public service obligations” (according to which Ukrenergo was obliged to finance electricity generation from coal for the heating season 2022-2023), both are not in place anymore

⁵⁴ [ENTSO-E Transparency Platform](#)

market. The termination of data publication impacts the day-to-day operation of market participants in the electricity market and, in fact, eliminates the main purpose of DAM, which is to show the competitive electricity market price as a reflection of supply and demand.

Furthermore, this information is widely used by different market participants to comply with their obligations under the various regulations. For example:

- DAM price is used as a reference (base price or its component) for the retail electricity prices offered by suppliers in the competitive segment of the retail market⁵⁵. If made unavailable for public access, it may cause misleading behavior toward end-users and limit customers' rights to choose the supplier based on the best commercial offer;
- the Retail Electricity Market Rules⁵⁶ provide that suppliers shall provide their consumers with the fuel mix for electricity supplied during the previous year, which shall be based, in particular, on the information on the share of each energy source and environmental impact in the structure of the volume of electricity purchased/sold on the DAM, IDM and balancing markets⁵⁷;
- DAM price index is used for settlements of RES support service under the feed-in premium mechanism, and the relevant procedure obliges Market Operator to publish this data on its own website, as well as to notify the Guaranteed Buyer⁵⁸;
- DAM price is used in settlements between the universal service suppliers and households for electricity generated by their RES units⁵⁹, including under the net-billing mechanism.

Market information is also essential for making investment decisions and building relevant business models. It is crucial for prospective investors and their decisions to invest in new generation capacities or for new entrants in the Ukrainian electricity market.

What is more, the decision's impact is discriminatory, as some market participants (who are participants in DAM/IDM or power exchange), could still have access to this information through their accounts in the MO's or UEEX's systems. However, this was not the case for other stakeholders, like customers or non-residents, who might follow the relevant information for their business activities.

Finally, this case revealed the issue with the predictability of the regulatory framework governing the energy market and institutional competencies, as the termination of data publication was based on non-public decision of the political person (the Minister of Energy), which was adopted outside the energy-related and/or martial law-related legal framework. The reasoning and procedural aspects of the adoption and implementation of order No.27-dsk were not transparently and timely communicated to the affected parties. The text of order No.27-dsk is still non-disclosed and no justification is provided by responsible institutions. The event was still not publicly commented on by the Ministry of Energy, or by NEURC. The lack of transparent communication with the market and interested stakeholders on such a kind of decision(s) does not facilitate the development of the electricity market and its further integration with the

⁵⁵ not covered by universal services and household public service obligations (PSO)

⁵⁶ approved by the NURC Resolution No. 312 dd 14.03.2018, <https://zakon.rada.gov.ua/laws/show/v0312874-18#Text>

⁵⁷ p.5.2.2(9) of the Retail Electricity Market Rules

⁵⁸ p.12.4 of the NEURC Resolution No.641 dd 26.04.2019, <https://zakon.rada.gov.ua/laws/show/v0641874-19>

⁵⁹ p.11.3.23 of the Retail Electricity Market Rules: In case there was no consumption and the USS buy all electricity from the RES unit at DAM price, but not higher than the household supply end-user price

EU internal electricity market. Furthermore, it raises concerns of market participants regarding the possible further interventions in the market processes.

All of the above undermines trust in the market, its transparency and predictability. The subsequent rapid resumption of some data publication without explanation for these actions only reinforced this.

4. Compliance assessment

According to Ukrainian national legislation, the Minister was appointed as the head of works on elimination of the consequences of the state-level military emergency in the electric power systems. As the order of the Minister of Energy 27-dsk is not public, it is not possible to assess whether it has been adopted in line with the Civil Defense Code, if the measures contained in it constituted an emergency response, especially given no publicly available data on any outstanding emergency in the energy system within the time of the order's adoption and if such measures are justified under martial law conditions. In any case, such a decision is binding for the parties to which it is addressed, including the Market Operator and UEEX.

The Energy Community acquis contains the general obligation for the Contracting Parties to ensure transparency with respect to the electricity market functioning. Furthermore, the Energy Community acquis pertaining to the intervention into the market processes (for the purpose to ensure the security of electricity supply or to mitigate electricity crises and in case of emergencies which require the further market suspensions, i.e. the Risks Preparedness Regulation and the ER NC) foresees that any imposed measure has to be clearly defined, transparent, effective, proportionate and non-discriminatory. In the present case, the crisis situation justifying the implementation of these measures is not clearly established, and the deviation from standard electricity market practices does not comply with the specified criteria.

The decision made by order No.27-dsk violates the Electricity Market Law and Energy Community transparency requirements, as it has not been made public and notified to relevant stakeholders.

The Electricity Directive provides that the Contracting Parties shall guarantee their regulatory authority's independence, impartiality, and transparency. The regulatory authority is legally distinct and functionally independent from other public or private entities, shall take autonomous decisions, independently from any political body. Therefore, order No.27-dsk also undermines the direct competencies of the national regulator NEURC to make decisions regarding the data publication or any restrictions, thereby violating the Electricity Market Law and Electricity Directive as regards the independence of the NEURC.

Furthermore, the information of the DAM and IDM results, specifically with regard to prices, falls under the definition of inside information under REMIT. To this end, building on the Article 3 and 4 of REMIT, suspension of publication of such information violates the obligation to publish information which is required to be disclosed in accordance with legal or regulatory provisions at Energy Community 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 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.

Consequently, the failure to disclose this information potentially constitutes a breach of REMIT's insider trading prohibitions.

5. Recommendations

The Energy Community Secretariat acknowledges the necessity of Ukrainian authorities to make decisions under the conditions of martial law. However, for a functioning electricity market to be maintained, proportionality and respect for institutional competences are essential. Therefore, it is recommended the institutional authority for electricity market regulation to be exercised according to the energy-related legislation, within established competencies and by avoiding encroaching upon them. Any interventions (derogations from regulatory acts) in the areas under the NEURC's authorities shall be done solely by NEURC decisions. Such decisions shall be reasoned, justified and follow the regulatory procedure according to the Law on NEURC.

Specifically, regarding order No. 27-dsk (especially given the absence of its publication), an analysis is required on whether order No.27-dsk was adopted within the limits of the legal authority and in accordance with the circumstances at the time of adoption.

To ensure legal certainty and, to the extent possible, transparency, when adopting amendments to the legislation and regulations in place, or when implementing measures under martial law, the legal ground for such revisions and their adoption should be clearly stated. This pertains to what is the legal basis for changes and proposed measures, to which acts and parties they apply, which rules prevail in specific situations. The specifics of the decision-making process due to the introduction of martial law should not create uncertainty about the liability of the decision-making institutions, in particular when it comes to the NEURC's competencies, which should be fully respected.

The completion of the transposition of the Electricity Integration Package should be accelerated in order to create the stable legal ground for a well-functioning market and its possible suspension as well as for better preparation for an electricity crisis taking into account the specific situation in the energy sector of Ukraine due to the regular damages of its energy infrastructure as a result of attacks.

Due to the delayed transposition of the Risk Preparedness Regulation and approval of the Risk Preparedness Plan, temporarily, the preparation for situations which constitute the risks for the security of electricity supply issues shall be resolved based on the existing Rules for Security of Electricity Supply. Relevant measures shall be justified, temporary, not go beyond what is needed to resolve the particular risk. Relevant measures shall be consulted with the NEURC, TSO, and other involved stakeholders, and communicated to the market in a transparent way. The information on such measures shall be also provided to the Energy Community Secretariat and the Energy Community Security of Supply Coordination Group, as required by the Electricity Market Law and the Rules on Security of Electricity Supply.

Even under conditions of martial law, NEURC shall implement an effective market monitoring process by applying the set of indicators (aggregated) as applied by ECRB, CEER, and ACER. Furthermore, NEURC should provide guidance on whether certain information can be published in aggregated forms to avoid inadvertent impact on the market and clarify if the non-published information is still considered inside

information under REMIT requirements. This is important to avoid uncertainty regarding compliance with REMIT prohibitions.

The Secretariat invites the Ministry of Energy and NEURC to assess the impact of order No.27-dsk regarding the closing of information on the market functioning.

In this regard, the Ministry of Energy is invited to:

- ensure the transposition of the Risk Preparedness Regulation and its implementation, that will allow proper assessment of risks to security of electricity supply, also due to martial law;
- fully leverage the existing energy-related legal framework, and ensure regular monitoring of the security of electricity supply, which will support the Ministry of Energy, along with other relevant stakeholders, to better prepare for and respond to potential risks;
- adopt decisions under martial law in close cooperation and consultations with the relevant stakeholders, to avoid the intervention in their competencies.

In this regard, the NEURC is invited to investigate and report on:

- whether the Market Operator informed the NEURC about the order No. 27-dsk (as a licensee of NEURC);
- whether the Market Operator complied with the obligations under the DAM/IDM Rules, the licensing conditions, and the REMIT requirements, in particular, to provide to the IIP the inside information on the termination of market data publication as required by Resolution No. 614;
- the actions of UEEX, as an organized marketplace, shall also be checked in this regard;
- trading activities in the electricity market during the period when the data publication was terminated in order to identify if there were any signs of market manipulations or distortions.