

**Von:** DOCUMENTS-ACCESS <DOCUMENTS-ACCESS@acer.europa.eu>  
**Gesendet:** Montag, 7. Februar 2022 19:50  
**An:** [REDACTED]  
**Betreff:** Application for access to documents n. 233207  
**Anlagen:** Documents for application n. 233207.zip

[REDACTED]  
Germany  
*By email*

[REDACTED]  
**Subject: Your application for access to documents – Ref No ACER-IN-2021/233207**

We refer to your e-mail dated 10 December 2021 in which you make a request for access to documents, registered on 17 December 2021 under the above-mentioned reference number.

Your application to access documentation related to the ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design (hereinafter the 'Report'), as well as the High Energy Prices Report, is reported below:

- 1- request to access the complete file concerning the origins of the report of 15 November 2021 (ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design) and the origins of the 'High Energy Prices' Report of 13 October 2021: this includes correspondence, documents, data, indications of sources, and consultations from or applications by other authorities, such as the Member States' market surveillance authorities or offices for fair trading.
- 2- request to access detailed documentation on the background (reason for analysis) regarding the origins of the 'High Energy Prices' Report, as well as communications with external organisations, unless this is clear from the entire collection.

Your application concerns access to the following documents:

1. *Correspondence with NRAs linked to the origins of the Report and the High Energy prices Report.*
2. *ENTSO-E and Platts - Data on Electricity Market Monitoring.* These data were used for Figure I 'Electricity day-ahead prices distribution compared to the cost of producing electricity with gas in Europe (2010–2021) (EUR/MWh)' of the Report, at page 4.
3. *ACER - Generation price data Sept 21.* This document contains data from ENTSO-E, used to create Figure 2 'Countries and their exposure to high electricity prices in September 2021' and Table 1 'Average day-ahead electricity prices (EUR/MWh) and average gas generation as a percentage of electricity demand in Europe (%): September 2021' of the Report, at page 6, as well as Figure 5 'Average electricity prices for bidding zones in Europe: September 2021 (EUR/MWh)' of the High Energy Prices Report, at page 6.
4. *IEA - Despite short-term pain, the EU's liberalised gas markets have brought long-term financial gains - 22.10.2021.* Figure 3 'Difference in natural EU gas import costs under actual import prices vs 100% oil-indexed prices and economic impacts of the hub-price shift (2010-2021)' of the Report, at

page 7, was extracted from this document. Also available online at [Despite short-term pain, the EU's liberalised gas markets have brought long-term financial gains – Analysis - IEA](#).

5. *Platts European Electricity Daily - Gas and electricity forward curve 11032021*. These data were used to create Figure 4 and 5 of the Report, at page 9.
6. *ACER - Sequence of exiting electricity markets in the EU*. Internal document used for Figure 6 ‘Sequence of exiting electricity markets in the EU’ of the Report, at page 10.
7. *ACER – Pay as cleared v average pricing*. Internal document used for Figure 8 ‘Illustration of the current electricity wholesale pricing method and a possible alternative’ of the Report, at page 12.
8. *ACER - ACER Market Monitoring Report 2020*. Document used for Figure 9 ‘Evolution of the continuous intraday-traded volumes, and its breakdown into cross-zonal and intra-zonal trades (2017–2020) (% and TWh) (left) and the relative increase (2017–2020) (right)’, at page 13 of the Report.  
*ACER Market Monitoring Report 2020; ACER Market Monitoring Report 2019; ACER Market Monitoring Report 2016; ACER Market Monitoring Report 2015; ACER Market Monitoring Report 2013*. Documents used for Figure 10 ‘Social welfare benefits already obtained and to be obtained from various actions intended to increase EU markets integration’ at page 14 of the Report. Documents are available at [ACER-CEER Market Monitoring Report \(MMR\) | www.acer.europa.eu](#).
9. *ICIS Heren and GIE - LNG v international prices data*. Document used for Figure 1 ‘Comparison of international wholesale prices spreads vs EU plus UK LNG imports: 2017 to September 2021 – EUR/MWh and bcm/month’ at page 4 of the High Energy Prices Report).
10. *The Oxford Institute for Energy Studies - Why are gas prices so high – 09.2021*. Document used for Figure 2 ‘Comparison of the changes in gas supply to the EU, 2019 vs 2021: bcm in the January to August period and winter gas consumption’ at page 5 of the High Energy Prices Report.
11. *Reuters - DA MA SA YA Prices for models* – Document refers to Figure 3 ‘Gas front month contracts from January to September 2021 - EUR/MWh’ at page 5 of the High Energy Prices Report.
12. *ICIS Heren- Charts in paper 10122021*. Document containing data used for Figure 4 ‘Price development for baseload electricity in Germany, gas, carbon and average short-run marginal costs of gas power plants (2010 - 2021)’ at page 6 of the High Energy Prices Report.
13. *ICIS Heren and REFINITIV - Gas and electricity forward curve 10042021*. Document containing data used for Figure 6 ‘Electricity forward curve’ and Figure 7 ‘Gas forward curve’ at page 8 of the High Energy Prices Report.
14. *ACER - Marginal pricing: Pay-as-clear*. Internal document used for Figure 9 ‘Marginal pricing: Pay-as-clear’ at page 11 of the High Energy Prices Report.
15. *IEA - Technologies costs*. Document containing data used for Figure 10 ‘Illustrative breakdown of costs for conventional and renewable generation technologies’ at page 11 of the High Energy Prices Report.
16. *IEA - Net Zero by 2050: a Pathway for the Electricity Sector*. Document used for Figure 11 ‘Outlook for global electricity generation and associated flexibility needs towards a 2050 net zero trajectory’ at page 12 of the High Energy Prices Report.
17. *ACER - Authorised Parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017*.
18. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016*.
19. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021*.
20. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019*.

In addition, please note that the following sources were also used, as described below:

- with regard to Figure 7 ‘Evolution of day-ahead market coupling (2010–2021)’ at page 11 of the Report on ACER’s Preliminary Assessment of Europe’s high energy prices and the current wholesale electricity market design, details on the geographical scope of market coupling and the milestones expected for 2022 were sourced from [SDAC \(nemo-committee.eu\)](https://sdac.nemo-committee.eu/);
- with regard to Figure 8 ‘Average EU electricity bill breakdown 2020 (% , EUR/MWh)’ at page 9 of the High Energy Prices Report, the figure was based on data from Eurostat Band DC, available at [Energy prices visualisation tool \(europa.eu\)](https://energy-prices.visualisation-tool.europa.eu/)).

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that some of the listed documents cannot be disclosed, as their disclosure is prevented by the exceptions to the right of access laid down in Article 4 of this Regulation.

Access is refused for the following documents:

1. *Correspondence with NRAs linked to the origins of the Report and the High Energy Prices Report.*
2. *ENTSO-E and Platts - Data on Electricity Market Monitoring.*
5. *Platts European Electricity Daily - Gas forward Curve and Electricity forward curve 11032021.*
9. *ICIS Heren and GIE - LNG v International prices data.*
11. *Reuters - DA MA SA YA Prices for models.*
12. *ICIS - Charts in paper 10122021.*
13. *ICIS and REFINITIV - Gas and electricity forward curve 10042021.*
17. *ACER - Authorised Parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017.* Access to this document is marked as 'Authorised parties only' and it can only be accessed by ACER and the NRAs. The MMH's aim is to ensure coordination and consistency in the investigations of potential REMIT breaches. It identifies the roles of each of the entities with wholesale energy market monitoring responsibilities (ACER, NRAs, PPATs), it provides guidance on case handling processes comprising interactions between those entities and defines the principles for efficient cooperation between ACER and the NRAs on REMIT breach cases.
18. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016.* This document provides the framework on which market surveillance is carried out at EU level. This document is not shared with non-authorised parties, as it contains information of strategic importance for ACER and the NRAs such as challenges in relation to market surveillance and goals to ensure effective surveillance across the EU.
19. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021.* This document details the surveillance coverage across Europe. In other words, this is a “who-does-what” document in relation to surveillance across the EU. This document is marked as 'Confidential' and should not be shared with non-authorised parties as it contains: (i) a surveillance gap analysis (both qualitative and quantitative) and (ii) division of monitoring work between NRAs and the Agency specified on a market level. This information is of strategic importance for ACER and the NRAs and sharing it would jeopardise the effectiveness of market surveillance across the EU.
20. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019.* This document contains the alert screening process at ACER, as well as the logic and parameters of the alerts. This document is marked as 'Confidential' and should not be shared with non-authorised parties. This document is the backbone of ACER’s market surveillance and sharing it with external parties would jeopardise ACER’s work in detecting and deterring market abuse in the EU wholesale energy markets.

Access is refused on the basis of the following legal grounds:

1. *Correspondence with NRAs linked to the origins of the Report and the High Energy Prices Report -* Disclosing all correspondence between ACER and NRAs linked to both Reports would seriously undermine the Agency's decision-making process and therefore, access is refused in line with Article 4(3) of Regulation (EC) No 1049/2001.
2. *ENTSO-E and Platts - Data on Electricity Market Monitoring.* Access is refused because related charts are based on data provided by a commercial platform and are not free of access. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001, the access cannot be granted as the disclosure would undermine the protection of commercial interests of a legal person.
5. *Platts European Electricity Daily - Gas forward Curve and Electricity forward curve 11032021.* Access is refused because the data used to make these charts were provided by a commercial platform and are not free of access. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001 access cannot be granted, as disclosure would undermine the protection of commercial interests of a legal person.
9. *ICIS Heren and GIE - LNG v International prices data.* Access refused because the data used to make this chart are not free of access and were provided by a commercial platform. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001, access cannot be granted, as disclosure would undermine the protection of commercial interests of a legal person.
11. *Reuters – DA MA SA YA Prices for models.* Access refused because the data used to make this chart are not free of access and were provided by a commercial platform. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001, access cannot be granted as the disclosure would undermine the protection of commercial interests of a legal person.
12. *Charts in paper 10122021.* Access refused because the data used to make this chart is not free of access and was provided by a commercial platform. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001, access cannot be granted as the disclosure would undermine the protection of commercial interests of a legal person.
13. *ICIS and REFINITIV - Gas and electricity forward curve.* Access refused because the data used to make this chart is not free of access and was provided by a commercial platform. Therefore, in line with Article 4(2) of Regulation (EC) No 1049/2001, access cannot be granted as the disclosure would undermine the protection of commercial interests of a legal person.
17. *ACER - Authorised Parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017.* Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
18. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016.* Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
19. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021.* Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
20. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019.* Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.

The exceptions laid down in Article 4(2) and 4(3) of Regulation (EC) No 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

The Agency believes that there is no overriding public interest that could justify the disclosure of documents 1, 2, 5, 9, 11, 12, 13, 17, 18, 19 and 20. There may exist a public interest in knowing the correspondence linked to both Reports, as well as the data and documents used for the purposes of both Reports, but this does not outweigh the interests protected by the invoked exceptions, and more specifically the harm that disclosure would cause to the Agency's decision-making process, to the protection of commercial interests of a legal person, as well as to the integrity of European energy markets and the effectiveness of Regulation (EU) No 1127/2011.

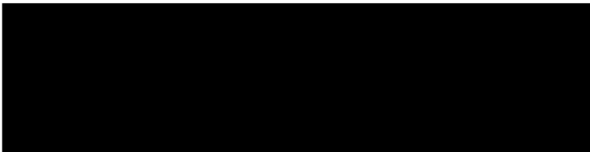
In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Agency to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director of the Agency at the following address:

Agency for the Cooperation of Energy Regulators  
Director  
Trg Republike 3  
1000 Ljubljana  
Slovenia

or by email to: [director@acer.europa.eu](mailto:director@acer.europa.eu) copying [DOCUMENTS-ACCESS@acer.europa.eu](mailto:DOCUMENTS-ACCESS@acer.europa.eu)

Yours sincerely,

A large black rectangular redaction box covering the signature area.