

# QUESTIONS & ANSWERS ON REMIT

**Last updated: 20 December 2011**

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## BACKGROUND INFORMATION

### WHAT IS REMIT?

REMIT is Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency. It has been published in the Official Journal of the European Union on 8 December 2011 and enters into force 20 days following its publication, i.e. on 28 December 2011. REMIT introduces, for the first time, a consistent EU-wide framework:

- defining market abuse, in the form of market manipulation, attempted market manipulation and insider trading, in wholesale energy markets;
- introducing the explicit prohibition of market manipulation, attempted market manipulation and insider trading in wholesale energy markets;
- establishing a new framework for the monitoring of wholesale energy markets to detect and deter market manipulation and insider trading; and
- providing the enforcement of the above prohibitions and the sanctioning of breaches of market abuse rules at national level.

### WHAT ARE THE BENEFITS OF GREATER TRANSPARENCY IN WHOLESALE ENERGY TRADING?

Wholesale energy markets provide key price signals which affect the choices of producers and consumers, as well as investment decision in production facilities and transport infrastructure. It is therefore essential that these signals reflect the real conditions of energy supply and demand. Greater transparency in wholesale energy markets reduces the risk that markets are manipulated and the price signals distorted.

Transparency in wholesale energy market is thus also crucial in ensuring that consumers pay the fair price for their gas and electricity. It also helps creating a level-playing field for all market participants.

### WHY DO WE NEED AN EU FRAMEWORK FOR WHOSESALE ENERGY TRANSPARENCY AND INTEGRITY?

The wholesale energy markets are increasingly pan-European. Energy markets in Europe are more and more interlinked. A market abuse in one Member State will also affect the price of energy in other Member States. Only a few Member States have so far succeeded in organising the monitoring of the wholesale energy markets within their own borders. Important trading venues have no clear prohibition of market abuse. Most of the transactions are not reported and fundamental data is not accessible to regulators. Therefore the European Union has judged it essential to set up a dedicated market integrity and transparency framework for the gas and electricity wholesale markets with an EU-wide monitoring scheme.

## **IS THERE NOT A RISK OF CREATING DOUBLE REPORTING OBLIGATIONS?**

REMIT has been designed to ensure that there are no double reporting obligations. Where data is reported under the EU financial regulation, THE AGENCY THE AGENCY will use this reporting channel as much as possible for collecting the information it needs to effectively monitor the wholesale energy markets. THE AGENCY THE AGENCY will indeed cooperate with EU financial regulators, both at the EU level (with ESMA, the European Securities and Markets Authority) and at the national level (with national financial regulators as appropriate).

## **WHAT PRODUCTS AND MARKETS ARE COVERED BY REMIT?**

REMIT applies to the wholesale energy market, which means any market within the Union on which wholesale energy products are traded. The definition of wholesale energy product under REMIT covers contracts for the supply of electricity and natural gas where delivery occurs in the Union as well as contracts relating to the transportation of electricity or natural gas in the Union. In both cases, REMIT covers contracts for physical delivery or for financial settlement.

However, the prohibitions of insider trading and market manipulation under REMIT do not apply to wholesale energy products which are financial instruments and to which Article 9 of Directive 2003/6/EC applies, i.e. wholesale energy products which are financial instruments admitted to trading on a regulated market in at least one Member State, or for which a request for admission to trading on such a market has been made, irrespective of whether or not the transaction itself actually takes place on that market. But this exemption only applies to the prohibitions of insider trading and market manipulation. The REMIT obligations, data collection and monitoring apply to all kinds of wholesale energy products.

## **ROLE OF THE AGENCY**

### **WHAT IS THE ROLE OF THE AGENCY UNDER REMIT?**

The Agency for the Cooperation of Energy Regulators (ACER) is expected to play a central role in the new monitoring framework under REMIT. As recognised in REMIT, THE AGENCY is best placed to carry out such monitoring as it has both a Union-wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union. Therefore the Agency has been tasked by REMIT with collecting and screening wholesale market transaction data across the EU and performing an initial assessment of anomalous events, before notifying suspected cases to national regulatory authorities for investigation.

## **WHY CENTRALISE THE MONITORING AT THE AGENCY?**

The wholesale energy markets in Europe are becoming increasingly transnational. National regulatory authorities typically see only a part of these markets. A centralised transaction monitoring with a holistic view of the markets is therefore essential to ensure effective detection and deterrence of abusive market practices. In addition, a centralised data collection will help to avoid double reporting of market participants active in several Member States to different national regulatory authorities based on different national data formats and will provide the Agency and national regulatory authorities with a complete set of data on the EU wholesale energy market.

## **WILL THE AGENCY PROSECUTE CASES OF MARKET ABUSE?**

Investigation on market abuse cases and prosecution of confirmed cases are left to national regulatory authorities. Member States have until 27 June 2013 (eighteen months from the date in which REMIT has entered into force) to adapt their legislation in order to give their national regulatory authorities the necessary powers to enforce REMIT.

## **WHAT ABOUT THE AGENCY GUIDANCE ON REMIT?**

Under REMIT, the Agency is responsible to ensure that national regulatory authorities carry out their monitoring and enforcement tasks in a coordinated and consistent way. In this context the Agency is publishing non-binding guidance, directed to national regulatory authorities and published for sake of transparency, which aims at providing a common understanding on how the definitions set out in Article 2 of REMIT are applied. It is not a legal interpretation of REMIT as this would go beyond the Agency's competence. The first edition of the guidance published on [21 December 2011] focuses on REMIT's market abuse definitions. The non-binding guidance will regularly be revised so as to take into account experiences gained by NRAs and the Agency in the implementation of REMIT, including feedback received from stakeholders, and changing market conditions. A second edition of the guidance is already foreseen for the first half of 2012.

# **REMIT DEFINITIONS**

## **WHAT IS MARKET ABUSE?**

Definitions in REMIT are based on the Market Abuse Directive, but tailored to the gas and electricity markets. Market abuse means insider dealing and market manipulation, which have become explicitly prohibited with the entry into force of REMIT.

The following seven types of behaviour may amount to market abuse, the first three of which constitute insider trading, the last four market manipulation, including attempted market manipulation:

1. Insider trading – when an insider trades, or tries to trade, on the basis of inside information.
2. Improper disclosure of inside information – where an insider improperly discloses inside information to another person, unless such disclosure is made in the normal course of the exercise of their employment, profession or duties.
3. Recommending on the basis of inside information – where an insider is recommending or inducing another person, on the basis of inside information, to acquire or dispose of wholesale energy products to which that information relates.
4. False/misleading transactions - trading, or placing orders to trade, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products.
5. Price positioning - trading, or placing orders to trade, which secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned.
6. Transactions involving fictitious devices/deception - trading, or placing orders to trade, which employs fictitious devices or any other form of deception or contrivance.
7. Dissemination of false and misleading information - giving out information that conveys a false or misleading impression about a wholesale energy product where the person doing this knows the information to be false or misleading.

## WHAT IS INSIDE INFORMATION?

Article 2 of REMIT defines “inside information” by means of the following four criteria information of a (1) precise nature, (2) which has not been made public, (3) which relates, directly or indirectly, to one or more wholesale energy products (4) and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products. In its non-binding guidance on the application of the definition of inside information, the Agency considers that, in view of the current limited experiences with the application of the definition of inside information in the wholesale energy market, the notion of “inside information” should currently be primarily understood in relation to:

- 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,
- Information which is required to be disclosed in accordance with other legal or regulatory provisions at Union or national level, insofar as this information is likely to have a significant effect on the prices of wholesale energy products and
- Any other information that is likely to have a significant effect on the prices of one or more wholesale electricity product if made public.

According to Recital 12 of REMIT, information regarding the market participant’s own plans and strategies for trading should not be considered as inside information.

These considerations apply until more experience is gained about the notion of inside information in wholesale energy markets. The Agency will publish a revised version of this non-binding guidance as soon as considered appropriate.

## **WHO IS CONSIDERED AN INSIDER?**

According to Article 3(2) of REMIT, the prohibition of insider trading applies to the following persons who possess inside information in relation to a wholesale energy products (insider):

1. members of the administrative, management or supervisory bodies of an undertaking;
2. persons with holdings in the capital of an undertaking;
3. persons with access to the information through the exercise of their employment, profession or duties;
4. persons who have acquired such information through criminal activity;  
Persons who know, or ought to know, that it is inside information.

## **WHAT ARE POSSIBLE EXAMPLES OF MARKET MANIPULATION?**

The Agency's non-binding guidance provides examples of the various types of practices which could constitute market manipulation and which are inspired by European energy regulators' own experiences and the experiences in financial markets. These can therefore be taken as indicating possible signals of market manipulation in wholesale energy markets according to REMIT. These considerations apply until more experience is gained about market manipulation in wholesale energy markets. More generally, the Agency considers that market participants' behaviour must be coherent with their technical and economic constraints in a way to comply with competition law, especially concerning market power exercise. The cooperation of the Agency and NRAs with the competition authorities, as foreseen by REMIT, must be understood in this respect. The Agency will constantly review its guidance on market manipulation and publish a revised guidance if considered appropriate.

## **OBLIGATIONS AND PROHIBITIONS FOR MARKET PARTICIPANTS**

### **I AM A MARKET PARTICIPANT. WHAT OBLIGATIONS DO I NEED TO FULFIL AS OF 28 DECEMBER 2011?**

As of 28 December 2011, with the entry into force of REMIT, market participants are subject to the obligation to (1) publish inside information; (2) notify the Agency and competent NRAs in case of delayed publication of inside information. The prohibition of market abuse, trading

on inside information, market manipulation and attempted market manipulation also comes into effect as of 28 December 2011.

### **Obligation to publish inside information:**

According to the general rule of Article 4(1) of REMIT, market participants shall publicly disclose in an effective and timely manner inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part. Such disclosure shall include information relevant to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities. Exemptions to this general rule may apply, in particular to delay publication of inside information.

## **HOW TO NOTIFY THE AGENCY OF DELAYED PUBLICATION OF INSIDE INFORMATION?**

In order to assist those market participants who are subject to the obligation to report on delayed publication of inside information, the Agency has developed a standard notification template, based on the experiences in financial markets, and recommends its adoption by all NRAs. The Agency foresees to collect the notification on such delayed publication of inside information mainly electronically, especially when there are data standards relating to this information (e.g. for information to be published in accordance with Regulations (EC) No 714/2009 and (EC) 715/2009). The relevant electronic template is available on the the Agency website.

## **I AM A PERSON PROFESSIONALLY ARRANGING TRANSACTIONS. WHAT OBLIGATIONS DO I NEED TO FULFIL AS OF 28 DECEMBER 2011 AND HOW?**

As of 28 December 2011, with the entry into force of REMIT, persons professionally arranging transactions (e.g. energy exchanges, brokers) are subject to an obligation to (1) establish effective arrangements to identify breaches; (2) notify NRAs in case of reasonable suspicion of market abuse.

The Agency considers that it would assist those subject to the obligation to report suspicious transactions if there were a standard reporting format for doing so and therefore has developed an electronic template to report suspicious transactions to NRAs. The relevant electronic template is available on the the Agency website.

## **TIMELINE OF THE IMPLEMENTATION**

### **WHEN DOES REMIT COME INTO FORCE AND INTO APPLICATION?**

REMIT was published in the Official Journal of the EU on 8 December 2011. It foresees the entry into force of its prohibitions and obligations within 20 days after its publication: the



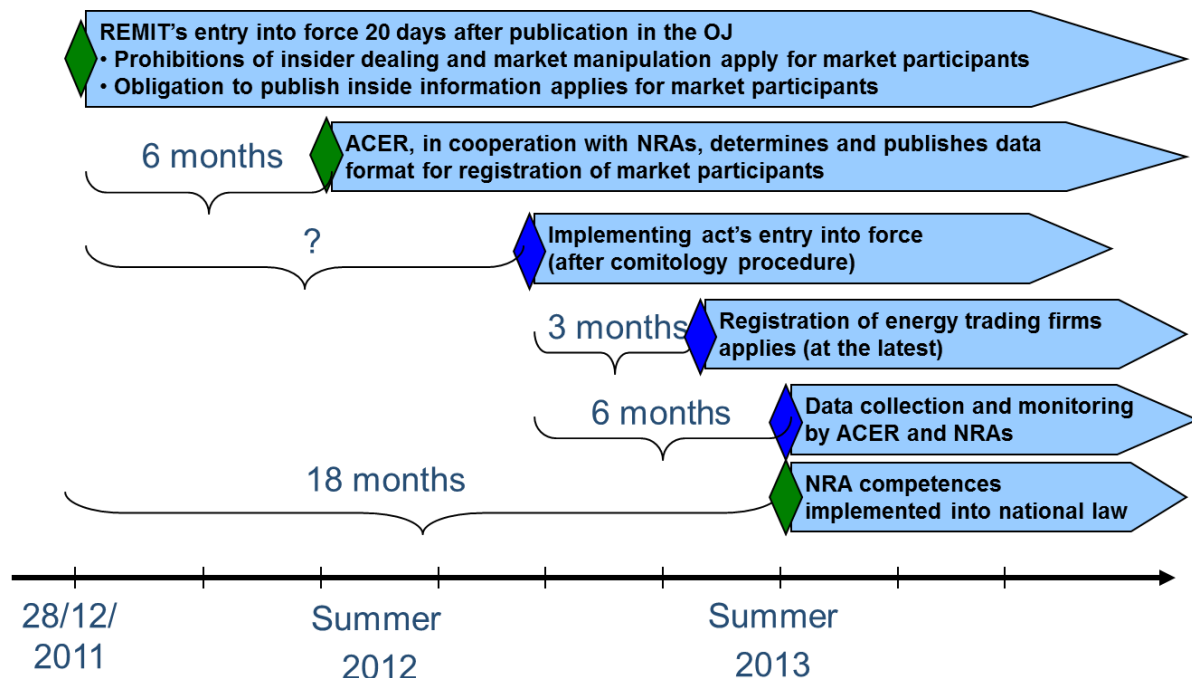
prohibitions of insider dealing and market manipulation, the obligation for market participants to publish inside information and the obligation for persons professionally arranging transactions to establish and maintain effective arrangements to detect market abuse and to notify reasonable suspicious cases to national regulatory authorities.

The regulation foresees a timetable for the entry into force of the remaining provisions.

- Within 6 months after the entry into force of REMIT, i.e. by June 2012, the Agency should publish guidance on the determination and data format for the registration of market participants. Within 18 months after the entry into force of REMIT, i.e. by June 2013, Member States have to assign investigatory and sanctioning powers to national regulatory authorities.
- The timing of entry into force of the remaining provisions of REMIT depends on the timing of the adoption by the European Commission of the Implementing Acts of REMIT following comitology procedure. This process can take up to 18 months.
- At the latest three months after the Implementing Acts enter into force, national regulatory authorities shall establish national registers of market participants which they shall keep up to date, so that, at the latest by then, the registration of energy trading firms starts. Another three months are foreseen before the data collection for monitoring purposes begins.

The full implementation of REMIT should therefore possibly be achieved by mid-2013.

### Provisional timeline of REMIT implementation:



## **WHEN AND WHERE DO MARKET PARTICIPANTS HAVE TO REGISTER?**

Within 6 months of REMIT entering into force, the Agency shall define the registration form for market participants. Another edition of the the Agency guidance will focus on the definition of market participant. the Agency currently considers that at the latest three months after the Implementing Acts enter into force, national regulatory authorities shall establish national registers of market participants which they shall keep up to date, so that at the latest by then, the registration of market participants starts.

## **WHEN DOES DATA COLLECTION START?**

Data collection is only due to start 6 months after the European Commission Implementing Acts are coming into force (see timeline of REMIT).

## **WHAT WILL HAPPEN IN THE INTERIM PHASE BETWEEN REMIT'S ENTRY INTO FORCE UNTIL THE ENTRY INTO FORCE OF THE REMIT IMPLEMENTATING ACTS?**

Since the monitoring activities under REMIT are based on the data collection according to Article 8 of REMIT and the relevant implementing acts, market monitoring in the interim phase – i.e. until the entry into force of the REMIT Implementing Acts - will rely on national regulatory authorities in application of their competences pursuant to the Third Energy Package or of genuine wholesale market monitoring competences under national law, with a strong coordination role for the Agency. National regulatory authorities may normally request wholesale energy data in ad-hoc cases on the basis of the record-keeping obligations for market participants. This may particularly be the case if a potential infringement of the prohibitions of market abuse is signalled by a person professionally arranging transactions according to Article 15 of REMIT or by a market participant. NRAs would have to inform the Agency about any such cases signalled to them.

## **WHEN WILL BREACHES OF REMIT BE SANCTIONED?**

The rules on penalties applicable to infringements of REMIT have to be stipulated by Member States in national law. Within 18 months following the entry into force of REMIT, i.e. by June 2013 at the latest, Member States will have to have enabled their national regulatory authorities with the necessary means and powers to investigate suspicious cases and prosecute confirmed cases. However, already with the entry into force of REMIT, trading venues may have foreseen the sanctioning of market participants in breach of market abuse rules under REMIT and market participants may seek the protection of their interest through the courts in case breaches of market abuse rules under REMIT by other market players.