
REMIT – Implementing Measures Clarifying Data Reporting Obligations

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Background

In 2011, the EU adopted *Regulation 1227/2011* on “wholesale energy market integrity and transparency”, known as “REMIT”. This created a regulatory framework for ensuring “market integrity” (i.e. put broadly, a market based on non-distorted, fair disclosure of information and activities by market participants) and transparency in wholesale electricity and gas markets.¹ As an EU Regulation, REMIT is “directly applicable”, meaning that the Regulation creates rights and obligations, which can be enforced in national courts independent of any national implementing measures.

However, REMIT also provides for an enforcement system by regulatory agencies in the EU.² Notably, REMIT requires the Agency for the Cooperation of Energy Regulators (“ACER”) to monitor trading activity in wholesale energy products to prevent and detect (i) market manipulation and (ii) trading based on inside information.

To allow for such control, market participants are required to provide data concerning wholesale energy market transactions (including orders to trade) to ACER. The information is then made available to National Regulatory Authorities (“NRAs”) in the EU for more specific enforcement.

REMIT itself broadly defined the data supply obligations, but left the European Commission (“EC”) to clarify them in more detail through so-called “Implementing Acts”, supplemented by other measures prepared by ACER, after consultation with those concerned by the new system.

REMIT EC Implementing Act

In December 2014, the EC adopted the first such implementing act on data collection, *EC Regulation 1348/2014*, which entered into force on 7 January 2015 (“The Regulation”).³

The Regulation implements Article 8(2) and (6) of REMIT,⁴ clarifying the data collection obligations for market participants and third parties reporting on their behalf. The Regulation (i) defines in detail what are the reportable wholesale energy products and fundamental data⁵ concerned; (ii)

establishes channels for data reporting (e.g. in some cases Transmission System Operators (“TSOs”) may report); and (iii) explains in detail what has to be reported when, in what format. In particular, the Regulation sets out:

- A list of reportable contracts.⁶
- A list of contracts reportable at request of ACER.⁷
- The details, timing and form of reporting.
- Uniform rules on the reporting of information to ACER and on appropriate thresholds for such reporting.

Such reporting does not have to take place immediately. Rather there is staggered timing for the provision of information, with standard contracts first, then non-standard contracts. However, the adoption of this legislation is significant because, together with the other measures taken by ACER to make all this work, it means that ACER and the NRAs should be in a position soon to start monitoring and investigating suspicious activities.

ACER has already started reviewing suspected breaches of the REMIT. ACER stated in its 2014 Annual Report on its REMIT activities that in 2013 it had reviewed 13 cases. Two of them were closed with no breach found, 11 were still under review at that time. (Five cases were on insider trading, six on the obligation to publish inside information and eight on market manipulation.)⁸

In parallel to all this, Member States also have been adopting their own implementing measures on related enforcement competencies, procedures and sanctions.

Reporting Parties’ “Staggered” Obligations

Under the Regulation, the reporting parties are required to fulfil a series of obligations in the coming months, namely to:

- Provide data on reportable wholesale energy contracts executed at Organised Market Places⁹ (including matched and unmatched orders) by **7 October 2015**.
- Provide fundamental data from the European Network of Transmission System Operators (“ENTSOs”) central information transparency platforms by **7 October 2015**.
- Provide data on the remaining reportable wholesale energy contracts (Over the Counter (“OTC”) standard and non-standard supply contracts; transportation contracts) by **7 April 2016**.
- Provide reportable fundamental data from TSOs, Liquefied Natural Gas System Operators (“LSOs”) and Storage System Operators (“SSOs”) by **7 April 2016**.
- Complete registration with one NRA prior to entering into transactions which are required to be reported under the Regulation.¹⁰

In addition, ACER can ask parties to report on certain other contracts by reasoned request on an ad hoc basis.¹¹ For example, intragroup contracts or contracts for balancing services in electricity or natural gas.

ACER can also enter into agreements with organised market places, trade matching or reporting

systems in order to obtain details of contracts, before the reporting obligations noted above become applicable.

ACER REMIT Portal and ACER Manuals

On 8 January 2015, one day after the Regulation entered into force, ACER launched the new “REMIT Portal”.¹² This is a central point of entry to the ACER REMIT Information System (“ARIS”), which enables reporting parties to register themselves for reporting (so-called “Registered Reporting Mechanisms” (“RRMs”).¹³

On the same day, ACER made available important supporting documents, which had been under preparation, establishing procedures, standards and electronic formats, including:¹⁴

- A list of Organised Market Places under the implementing acts.
- A “Manual of Procedures on Transaction and Fundamental Data Reporting”.
- A “Transaction Reporting User Manual” (the so-called “TRUM”).
- Requirements for RRM.

Reporting Parties’ Next Steps

In the next 14 months, market participants and third parties reporting on their behalf therefore should be taking the following reporting steps:

- Register with the NRA in the Member State in which they are established or resident or, in case of not being established or resident in the European Union, in a Member State in which they are active.
- Prior to entering reportable transactions, register through the REMIT Portal as a RRM.
 - This is a three step registration (identification, attestation and testing), which is expected to take three months.
- By **7 October 2015**, provide ACER:
 - with a record of reportable wholesale energy contracts admitted to trading at Organised Market Places; and
 - fundamental data from the ENTSOs central information transparency platforms.
- By **7 April 2016**, provide ACER:
 - with a record of the remaining reportable wholesale energy contracts; and
 - fundamental data from TSOs, LSOs and SSOs.

However, above all, in parallel to such reporting, market participants should be considering what their data may show and how they should monitor it themselves, so that they are in control of their own compliance.

This alert has been prepared by John Ratliff, Roberto Grasso and Virginia del Pozo.

¹ See WilmerHale Alert of 31 October 2011, available at:

<http://www.wilmerhale.com/pages/publicationsandnewsdetail.aspx?NewsPubId=87107>.

² The system also applies to the EEA, i.e. Norway, Iceland and Liechtenstein.

³ EC Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the (EU) Council on wholesale energy market integrity and transparency, OJ L 363, 18.12.2014, p. 121-142; and ACER Press Release of 17 December 2014, *ACER welcomes adoption of REMIT Implementing Acts*, available at: <http://www.acer.europa.eu/Media/News/Pages/ACER-welcomes-adoption-of-REMIT-Implementing-Acts.aspx>.

⁴ Article 8(2) and (6) generally provide the EC with the powers: to adopt implementing acts in order to draw up a list of reportable contracts and derivatives, including orders to trade and appropriate *de minimis* thresholds for such reporting; to adopt uniform rules and appropriate thresholds for the reporting of information; and to lay down the timing and form for the reporting.

⁵ “Fundamental data” means information on capacity and use of facilities for the production, storage, consumption or transmission of electricity or gas, or related to the capacity or use of LNG facilities.

⁶ See Article 3 of the Regulation.

⁷ See Article 4 of the Regulation.

⁸ See the case statistics in section 3.4.1 of the Report, which is available at: http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/REMIT%20Annual%20Report%20

⁹ Pursuant to Article 2(4) of the Regulation, “Organised Market Place” means: (a) a multi-lateral system, which brings together, or facilitates the bringing together, of multiple third party buying and selling interests in whole energy products in a way that results in a contract; (b) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract.

¹⁰ REMIT provides that, three months after the EC adopted the Regulation, the NRAs are required to establish national registers of market participants.

¹¹ See Article 4 of the Regulation.

¹² See REMIT Portal, available at: <https://www.acer-remit.eu/portal/home>

¹³ See ACER Press Release of 7 January 2015, *ACER welcomes the REMIT Implementing Acts’ entry into force and announces the launch of its new REMIT Portal on 8 January 2015*, available at: <http://www.acer.europa.eu/Media/News/Pages/ACER-welcomes-the-REMIT-Implementing-Acts%E2%80%99-entry-into-force-and-announces-the-launch-of-its-new-REMIT-Portal-on-8-January-2.aspx>

¹⁴ ACER supporting documents are available at: <https://www.acer-remit.eu/portal/acer-documents>