



Publishing date: 10/06/2014

Document title: REMIT Annual Report 2014

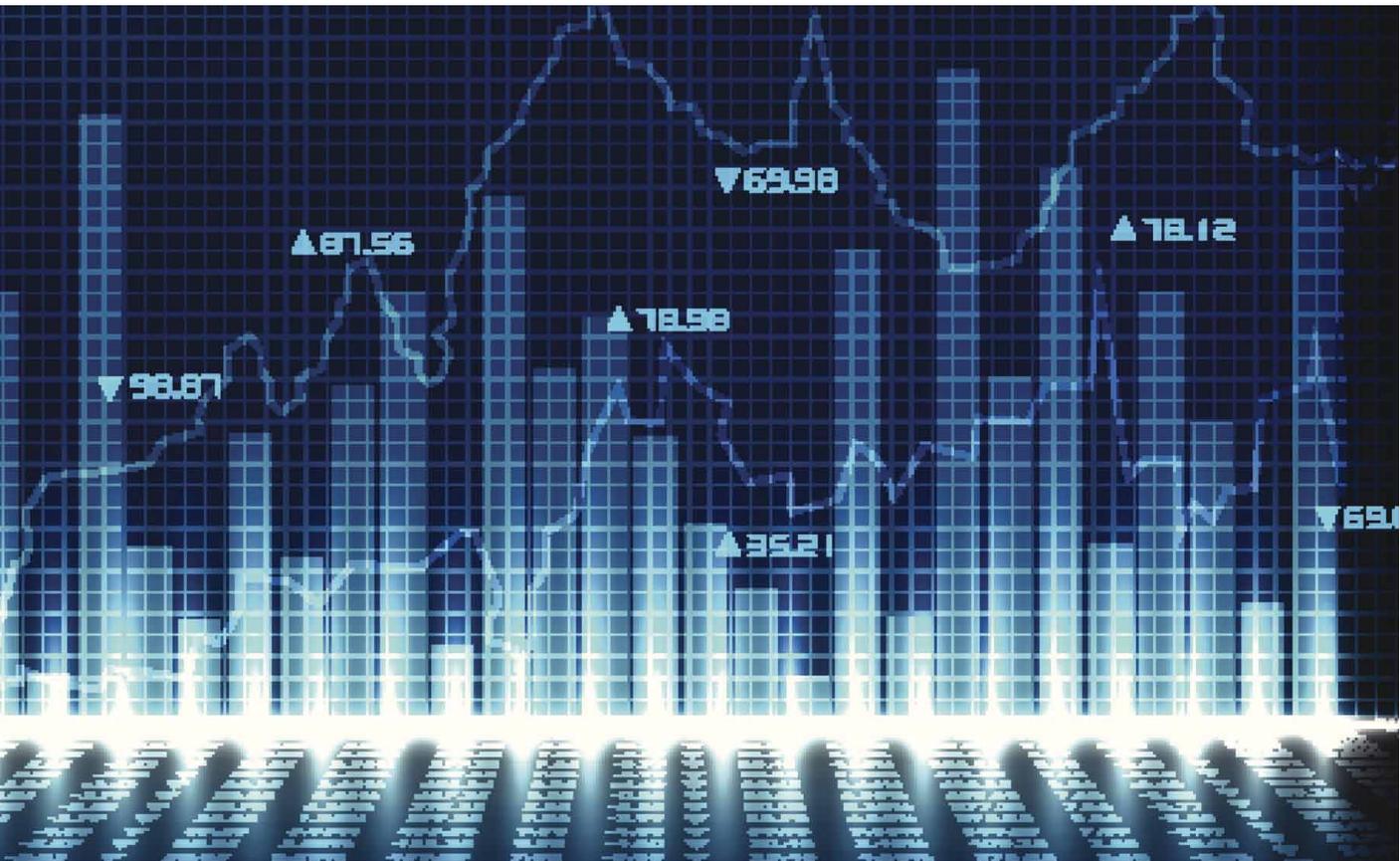
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This report is available in English.

Catalogue number: MF-AC-14-001-EN-N
ISBN 978-92-95083-14-1
ISSN 2363-1066
DOI: 10.2851/17873

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Printed in Slovenia

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Foreword by the ACER Director



I am pleased to present this second Report on the Agency's activities under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). The Report focuses on the Agency's implementation and monitoring activities in 2013.

REMIT plays an important role in the completion of a well-functioning internal energy market within the European Union: its efficient and coordinated implementation is therefore crucial. REMIT introduces a new, unprecedented, sector-specific framework to detect and prevent market abuse in European wholesale energy markets. As REMIT covers legislative and technical aspects of which there is still little experience worldwide, its implementation poses a formidable challenge for the Agency.

REMIT will be fully implemented only once the data reporting obligation enters into force, which is dependent of the adoption of the implementing acts by the European Commission. In time of writing, the implementing acts are expected to be adopted by the Commission in the second half of 2014, meaning that data collection is expected to start in the first half of 2015. Once data collection starts, the Agency will be able to effectively and efficiently detect and deter market manipulation and trading based on inside information, ensuring market integrity and transparency for the benefit of European energy consumers and citizens.

Due to the uncertainties about the final requirements for data collection, which heavily depend on the Commission's implementing acts, the development of the IT system is done through an iterative approach in order to avoid delays of the final solution. In the second half of 2013, the Agency conducted a pilot project primarily focused on collecting data through third parties reporting on behalf of market participants. A second phase of the pilot project started in end-2013 and was conducted in the first half of 2014.

The challenging work of implementing REMIT, which is described in this report, has involved National Regulatory Authorities (NRAs) – which may also monitor energy markets at national levels and which will be responsible for investigations and enforcement – and a large number of energy market participants and other stakeholders. I would like to express my gratitude to all of them, for their continuous constructive cooperation and support. During 2013, the Agency signed Memoranda of Understanding (MoUs) with NRAs, the European Securities and Markets Authority (ESMA) and organised market places which further specify the practical terms for the cooperation.

Furthermore, this report illustrates the Agency's market monitoring strategy and the results of the coordination activities performed by the Agency over the last year. An increasing number of cases of suspected breaches of the information disclosure obligations and of the market abuse prohibitions under REMIT

have been brought to the attention of the Agency. The Agency has assessed these cases in close cooperation with the involved NRAs and, if applicable, national financial regulatory authorities. As for 2012, the cases provided a test ground for the methodologies and procedures to be used in the future, even though their assessment was hampered by the lack of a systematic collection of trade and fundamental data, something which will become available once the reporting obligation is in force.

The way in which the Agency's monitoring of wholesale energy markets will be organised in the future, and its effectiveness, will crucially depend on the human resources – in terms of expert market analysis capabilities – available to the Agency. In fact, the resources currently available, while sufficient to perform system development and coordination at the limited scale undertaken in 2013, are clearly inadequate to monitor and assess the amount of information on wholesale energy markets which the new monitoring framework will make available.

2014 will be a crucial year for the Agency as regards the implementation of REMIT. Major progress was achieved in 2013 in the development and deployment of a tailor-made IT infrastructure to support the upcoming data collection and the Agency's market monitoring framework, thanks also to a financial transfer from the European Commission, Directorate General for Energy, in October, which is gratefully acknowledged. This work is continuing in 2014, alongside the effort to define the most efficient approach to market monitoring on the basis of the available resources will also proceed. Therefore it would be most unfortunate if, once trade and fundamental data become available to the Agency, the effectiveness of wholesale energy market monitoring will be jeopardised by the Agency lacking the necessary additional expertise and resources. Based on the experience in the US, the benefits of market integrity and transparency are likely to be manifold larger than any resource costs involved in effective monitoring. I am thus confident that the Agency will be put in a position to fulfil its mission under REMIT in the effective way that European energy consumers deserve.



Alberto Pototschnig
ACER Director

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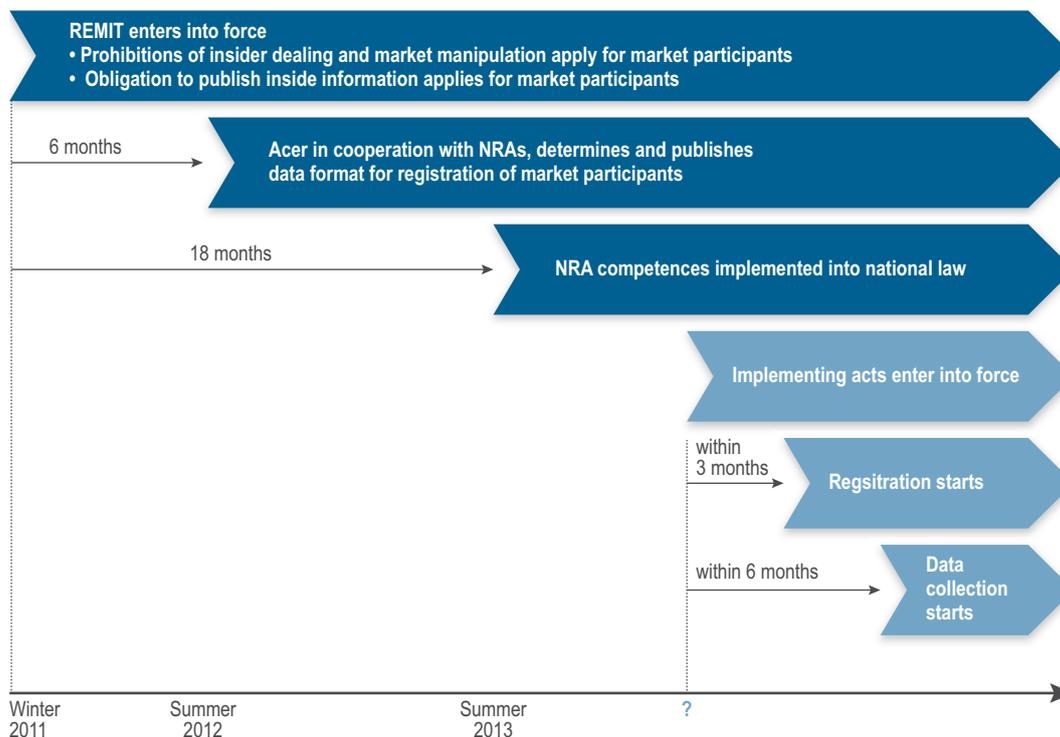
The background of the slide features two financial charts. The top chart is a candlestick chart with red and green bars, set against a light blue grid. The bottom chart is a line graph with a jagged line and several straight trend lines, also on a light blue grid. The overall aesthetic is professional and data-oriented.

Introduction

1 Introduction

- 1 Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) was published in the Official Journal of the European Union on 8 December 2011. On 28 December, the prohibitions of insider trading, market manipulation and attempted 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 suspicious cases to national regulatory authorities (NRAs), came into force.
- 2 Within six months of the entry into force of REMIT, i.e. by 28 June 2012, the Agency was required to determine a format for the European register of market participants, and within 18 months, i.e. by 28 June 2013, Member States were called to assign investigatory and enforcement powers to NRAs and to put in place rules on penalties applicable to infringements of REMIT.
- 3 The timing of the entry into force of the remaining provisions of REMIT depends on the timing of the adoption of the implementing acts by the European Commission following a comitology procedure. Within three months of the adoption of the implementing acts, NRAs shall establish national registers of market participants. Within six months of the adoption of the implementing acts, data reporting under REMIT starts.

■ Figure 1: Provisional timeline for the implementation of REMIT



- Phase 1: Triggered by entry into force of REMIT
- Phase 2: Triggered by entry into force of REMIT implementing acts

4 The activities of the Agency with respect to REMIT are to be performed in two stages:

- The **implementation stage**, in which the Agency puts in place the IT tools and the procedures for effectively monitoring wholesale energy markets, including data exchange with NRAs and other authorities (at national and EU level) with which the Agency will cooperate. This stage started with the entry into force of REMIT on 28 December 2011. In 2013, the Agency focused on the development of the IT systems for registration of market participants, data collection and data sharing, and the effective monitoring of the markets in wholesale energy products. The implementation of data collection and sharing platform, as well as of the market monitoring system, will be completed within six months of the adoption of the implementing acts; at this time, the reporting obligation on market participants will take effect and so the full monitoring framework should be in place. As the adoption of the implementing acts is expected to take place in the second half of 2014, the implementation stage needs to be completed in the first half of 2015.
- The **operational stage**, in which the Agency will be responsible for actively monitoring trading activities in wholesale energy markets to detect and prevent market manipulation, attempted market manipulation and trading based on inside information. This involves, *inter alia*, the collection of trade and fundamental data, to be reported by market participants and other reporting entities, the screening of such data, in the light of the state of the energy systems, to identify instances of possible market abuse and their notification to national competent authorities who are responsible for investigation and enforcement. The Agency will also be responsible for coordinating investigations.

5 Market monitoring under REMIT is an important new task for the Agency as market integrity and transparency is essential for well-functioning energy markets and for promoting the confidence of market participants and final consumers.

Implementation

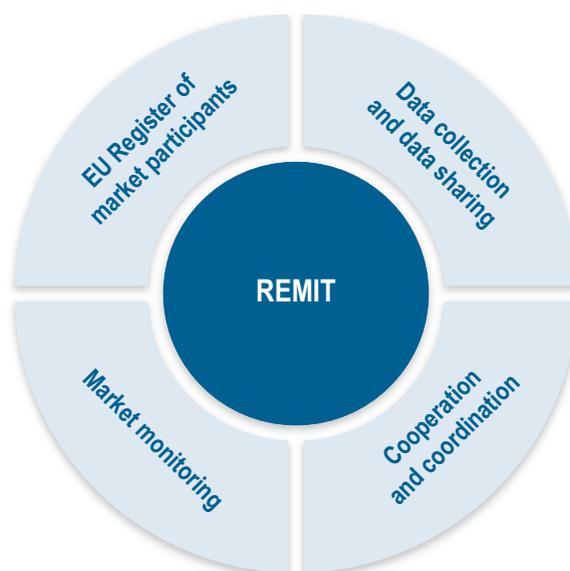


2 The Agency's REMIT implementation activities in 2013

2.1 Introduction

- 6 The preparatory work for implementing REMIT was a priority for the Agency in 2013. The activities described in this chapter are classified according to the four categories shown below.

■ Figure 2: The Agency's activities under REMIT

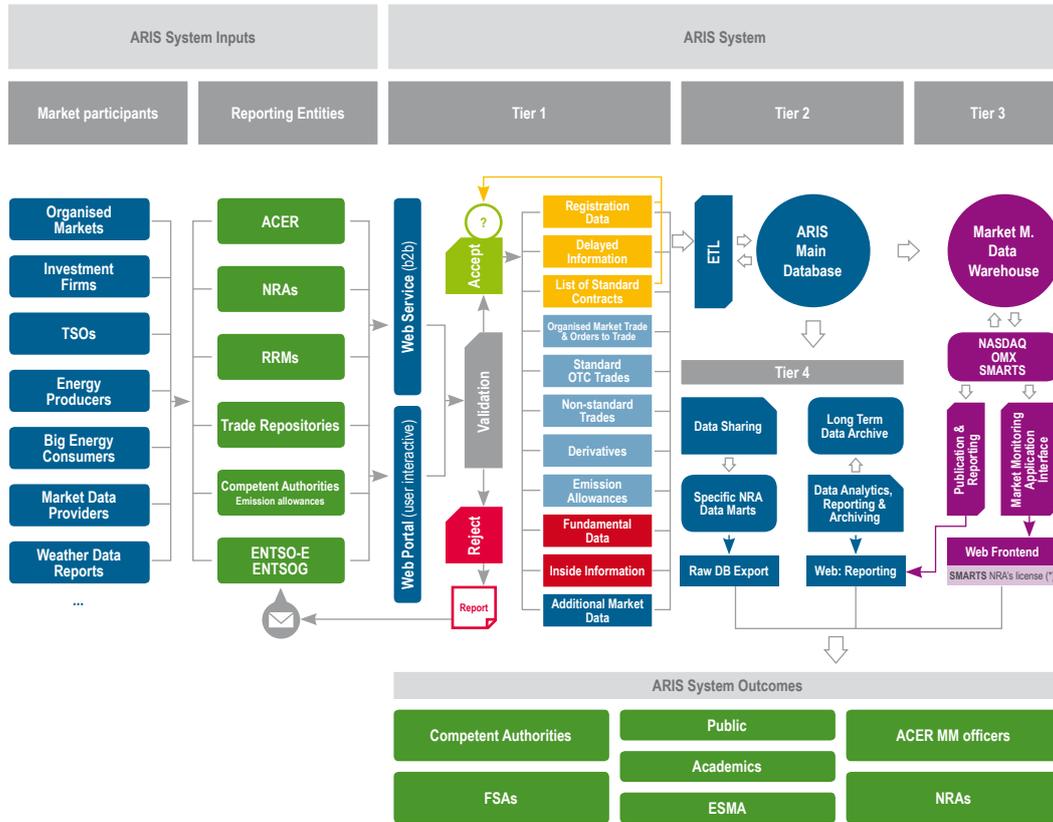


- 7 Following the adoption of REMIT, the Agency had to plan and structure the development of a new IT infrastructure accordingly in order to accommodate an increased number of users and the new tasks assigned under the regulation.
- 8 The Agency's IT implementation of REMIT was performed with IT consultants selected on the basis of three IT procurement procedures in 2012.
- During October and November 2012, the Agency signed multiple framework contracts (ACER/OP/ADMIN/12/2012) in cascade for web application development services for the implementation of the Agency's REMIT Information System (ARIS). These were awarded to the following contractors: Lutech S.p.A. (1st contractor), Caggemini Italia S.p.A. (2nd contractor) and Intrasoft International S.A. (3rd contractor).
 - In December 2012, the Agency signed a framework contract (ACER/OP/ADMIN/21/2012) with OMX Technologies for the delivery of its SMARTS Integrity market surveillance system to the Agency for the monitoring of the European wholesale energy markets under REMIT. The SMARTS system will provide the Agency with a surveillance platform to automatically screen trade and fundamental data for detecting insider trading, market manipulation and attempted market manipulation across European wholesale energy markets. The solution will allow analysis of power and gas trading across the EU and provide the Agency with a consolidated view on a pan-European basis.

- Since a tender for IT consultancy could not be awarded in 2012 and since a framework contract (ACER/OP/ADMIN/14/2012) with CSI Piemonte on IT hosting services was terminated early, as it did not cover all the services that the Agency had determined as essential for hosting the infrastructure required for the implementation of REMIT, two tendering procedures for IT consultancy and for IT hosting services were re-launched in 2013. In December 2013, the Agency signed a framework contract (ACER/OP/MMD/12/2013) with Telekom Slovenia on IT hosting services. The tender procedure for the IT consultancy services (ACER/OP/MMD/09/2013) was only completed in early 2014.
- 9 Overall, major milestones for the IT implementation of REMIT were achieved in 2013 despite the fact that the Agency received most of the required financial resources very late in the year (November 2013).
- 10 On the basis of the significant preparatory work undertaken by the Agency in 2012 and 2013, the Agency developed a concept for ARIS based on four pillars, or tiers:
- Tier 1 of ARIS will support the collection of the reported trade and fundamental data. The scope and details for the data to be reported under Tier 1 will be defined by the European Commission in the implementing acts.
 - Tier 2 of ARIS is the main database, where all the reported trade and fundamental data, as well as the registration data from market participants, will be stored.
 - Tier 3 of ARIS is the market monitoring system, which will screen and analyse the data collected and processed in Tier 1 and 2, in order to identify anomalies that might be possible market abuse cases (i.e. suspicious events). Through a number of alerts, it will notify the Agency's surveillance experts in the Market Monitoring Department of such cases. The market monitoring system will also be used for supporting investigations conducted by NRAs in coordination with the Agency.
 - Tier 4 of ARIS is the data sharing system. According to Article 10 of REMIT, the Agency shall establish mechanisms to share the information held in ARIS with NRAs, financial regulatory authorities, national competition authorities, the European Securities and Markets Authority (ESMA) and other relevant authorities. This tier may also be used for additional data analysis, reporting and archiving, and for the publication of certain aggregated information according to Article 12(2) of REMIT.

11 Figure 3 illustrates the Agency's concept for ARIS.

■ Figure 3: The ARIS high level design



12 According to the requirements set out in Article 12 of REMIT, the Agency shall ensure the confidentiality, integrity and protection of the information collected under REMIT. Hence, ARIS must be operationally reliable. In particular, the Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in ARIS.

13 The Agency intends to have a full ARIS system available within six months of the adoption of the Commission's implementing acts. The timeline will be specified in due time with regard to the timeline for the adoption of the implementing acts.

14 Software development started in 2013 and is described in greater detail in Chapter 2.3.

2.2 Registration of market participants

- ¹⁵ According to Article 9 of REMIT, market participants entering into transactions which are required to be reported to the Agency under REMIT shall register with the NRA in the country in which they are established or active. A market participant shall register only with one NRA. Member States shall not require a market participant already registered in another Member State to register again. The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules. No later than three months after the adoption of the implementing acts, NRAs shall establish national registers allowing market participants to start registering. Following the registration of market participants, NRAs shall transmit the information in their national registers to the Agency through Centralised European Register of wholesale Energy Market Participants (CEREMP), in order to enhance the overall transparency and integrity of wholesale energy markets. In the following section, the Agency's activities relating to the registration of market participants are described.

2.2.1 Policy developments

2.2.1.1 Guidance to the NRAs on registration

- ¹⁶ According to Article 16(1) of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. For this purpose the Agency issues non-binding Guidance to NRAs on the application of REMIT. The Guidance is made public for transparency purposes only and in no way provides an interpretation of REMIT.
- ¹⁷ In its third edition of the Guidance, published on 7 November 2013, the Agency provides guidance to NRAs concerning the registration of market participants and, in particular, on the role of NRAs in the registration process. In the Guidance, the Agency provides its current understanding of the application of Article 9 in order to facilitate the harmonisation of practices across the Union. An extract from the Agency's third edition of the Guidance is provided in the Box below.

Box 1: Registration of market participants under REMIT

Which market participants are obliged to register?

Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority.

According to Article 2(7) of REMIT,

“market participant” means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

The requirement to register under REMIT applies to any person, legal or natural, that enters into transactions which are required to be reported. Therefore, it is important to note that all market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) must register, even if a parent, subsidiary or other related undertaking is already registered or is registering. Provided they are not separate legal persons, branches of a market participant do not need to register as separate market participants.

What information is market participants required to provide?

Article 9(3) of REMIT requires the Agency, in cooperation with NRAs, to determine and publish, by 29 June 2012, the format in which NRAs should transmit registration information on market participants to the Agency.

On 26 June 2012, the Agency adopted a Decision determining the registration format to be used for the establishment of the European register of market participants. The registration format consists of 5 sections:

- Section 1: Data related to the market participant
- Section 2: Data related to the natural persons linked to the market participant
- Section 3: Data related to the ultimate controller or beneficiary of the market participant
- Section 4: Data related to the corporate structure of the market participant
- Section 5: Data related to the delegated parties for reporting on behalf of the market participant

All market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) are required to provide this information.

Establishment of national registers

According to Article 9(2) of REMIT:

Not later than 3 months after the date on which the Commission adopts the implementing acts set out in Article 8(2), national regulatory authorities shall establish national registers of market participants [...].

Thus, each NRA shall establish a registration system by which market participants can provide registration information to that NRA no later than 3 months after the adoption of the implementing acts. NRAs can, if they wish, open the registration process to market participants earlier than this.

NRAs are free to use whatever system they deem most appropriate for their market. The Agency is developing a system to be used to establish the European register of market participants. This system will also be available to NRAs as a means of registering market participants in their own Member State.

With which NRA should market participants register?

According to Article 9(1):

Market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) shall register with the national regulatory authority in the Member State in which they are established or resident, or, if they are not established or resident in the Union, in a Member State in which they are active.

According to settled case law of the Court of Justice of the European Union, a legal or natural person can be established in more than one Member State. The legal or natural person is established in the Member State(s) in which it pursues a professional activity on a stable and continuous basis. If a market participant is established in more than one Member State, the Agency would normally expect market participants to register in the Member State in which they have their primary establishment.

For market participants not established or resident in the Union, it is the Agency's understanding that such market participants may choose in which Member State to register, as long as they are active in that Member State.

When is the deadline for registration to be submitted?

According to Article 9(4) of REMIT,

Market participants (...) shall submit the registration form to the national regulatory authority prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1).

Thus, market participants must submit the registration form before entering into any transaction which is required to be reported to the Agency. Consequently, market participants entering into a transaction which is required to be reported in accordance with Article 8(1) of REMIT prior to submitting the registration form may be in breach of Article 9 of REMIT. NRAs should encourage market participants to register well in advance of entering into a transaction which is required to be reported to facilitate a smooth registration process.

In accordance with the ACER Decision No 01/12, for practical reasons illustrated in Chapter 4.7, the registration process will be split into two phases for market participants registering before the Agency has published for the first time the list of market participants in the European register.

In the first phase, such market participants shall provide information relating to Sections 1 (data related to the market participant), 2 (data related to the natural persons linked to the market participant), 3 (data related to the ultimate controller or beneficiary of the market participant) and 5 (data related to the delegated parties for reporting on behalf of the market participant) of the registration format. The Agency considers that any person who, after six months from the adoption of the implementing acts, enters into a transaction which is required to be reported to the Agency without having completed the first phase of the registration process may be in breach of Article 9 of REMIT.

In the second phase, such market participants shall provide the information relating to Section 4 (data related to the corporate structure of the market participant) of the registration format. This information has to be completed within 3 months from the first publication of the European register. Any market participant who, after this deadline, enters into a transaction that is required to be reported to the Agency without having provided the information relating to Section 4 may be in breach of Article 9 of REMIT, even if the market participant has completed the first phase of the registration process and received an ACER code.

Any market participant registering after the Agency publishes for the first time the European register will be required to submit the information related to all the sections of the registration format before the registration form can be considered to be correctly submitted. This is likely to apply to persons that are not currently trading products required to be reported by the Commission's implementing acts, i.e. 'new' market participants.

Issuance of the ACER code

As required by Article 9(2) of REMIT, each market participant registered under REMIT will be issued with a unique identifier (the "ACER code"). The ACER code will enable market participants to report data under Article 8 of REMIT. Market participants will also need the list of ACER codes in order to provide information relating to Section 4 of registration format (data related to the corporate structure of the market participants).

According to Article 9(4) of REMIT, market participants shall submit the registration form prior to entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT. The ACER code will be issued upon the transmission for the first time of the information in the national registers to the Agency, in accordance with the ACER Decision No 01/12. According to Article 2 of this ACER Decision, NRAs should promptly transmit the registration information to the Agency once it is submitted by the market participant, after which the Agency immediately issues the ACER code. Thus, NRAs should ensure that market participants receive the ACER code in a timely manner, and in any case before the transactions entered by the market participants are required to be reported to the Agency in accordance with Article 8(1) of REMIT. This will enable market participants to fulfil their reporting obligations under Article 8(1) of REMIT and an efficient and effective data collection by the Agency. The registration system will provide for automatic checks that will prevent incomplete registration forms to be submitted.

For market participants registering before the Agency for the first time publishes the European register, the ACER code will be issued upon the submission of those market participants' first phase information (relating to Sections 1, 2, 3 and 5) to the relevant NRA. However, such market participants should not consider the receipt of an ACER code as a confirmation that they have completed the registration process. In order to complete the process, such market participants still need to provide the information relating to Section 4 of the registration format within 3 months from the first publication of the European register, as described in Chapter 4.6.

For any market participant registering after the Agency for the first time publishes the European register, the ACER code will be issued upon the submission of all sections of the registration format to the relevant NRA (i.e. Sections 1, 2, 3, 4 and 5).

Requirement to keep registration information up to date

According to Article 9(5) of REMIT,

Market participants [...] shall communicate promptly to the national regulatory authority any change which has taken place as regards the information provided in the registration form.

It is important to recognise that registration is not a one-off event, but rather an ongoing requirement. REMIT not only requires market participants to register with an NRA prior to entering into a transaction, but also to update their registration form with any change which has taken place as regards the information provided in the registration form in accordance with Article 9(5) of REMIT. If a change of the mandatory registration information is not communicated promptly, the registration is to be considered incomplete. Market participants whose registration form is out-dated may be in breach of Article 9 of REMIT.

Although the responsibility to update the information provided to the national registers rests with the market participants, the Agency considers it best practice that NRAs set up regular reminders (e.g. once a year) to market participants asking them to check that the information submitted is still correct and up to date.

The role of NRAs in the registration process

Having in mind that market participants are obliged to register at national level, and not directly with the Agency, registration of market participants under REMIT is first and foremost a national process. NRAs should be prepared to undertake three roles during the registration process.

The first role is to act as a source of support for market participants seeking to register with that NRA. Even for those NRAs that choose to use ACER's registration system, it is the NRAs that should provide users with support during the registration process. As referred to in Chapter 4.4 of this Guidance, the Agency will make available a Registration User Manual (RUM) to NRAs that may use it when supporting market participants. However, the Agency recognises that ultimate responsibility to register successfully lies with market participants.

The second role of NRAs is to transmit the information in their national registers to the Agency. In accordance with Article 2 of the ACER Decision no 01/2012, NRAs should promptly transmit the registration information to the Agency once it is submitted by the market participant, after which the Agency immediately issues the ACER code.

The third role relates to the accuracy of registration information. NRAs, according to Article 9(2) of REMIT, shall establish registers of market participants which they shall keep up to date. Accurate information in the national and European registers of market participants is a prerequisite for an efficient and effective market monitoring system. The Agency considers it best practice that NRAs have systems in place to effectively check the registration information provided by market participants to identify omissions and obvious errors. Any errors detected by NRAs should be promptly notified to the Agency. The registration system developed by the Agency will provide for automatic checks that will prevent incomplete registration forms from being submitted by market participants.

It is important to note that through the registration process, NRAs do not issue an authorisation or license to trade to the market participants. The completion of the registration process does not constitute a "know-your-customer" check or "fit-and-proper" assessment of the market participant.

■ Figure 4: Summary of the registration process



2.2.1.2 Public consultation on the publication of the EU register

- ¹⁸ According to Article 9(3) of REMIT, the Agency shall establish a European register of market participants based on the information in national registers (Article 9(1) of REMIT) and transmitted by the NRAs to the Agency. The Agency may decide to make the European register, or extracts thereof, publicly available, provided that commercially sensitive information on individual market participants is not disclosed.
- ¹⁹ On 7 November 2013, the Agency launched a public consultation on the publication of extracts from the European register of market participants¹. The public consultation document aimed to collect the respondents' views on two main consultation issues:
- information necessary for market participants to fulfil their registration obligations according to Article 9(1) of REMIT and;
 - information to improve transparency of wholesale energy markets.
- ²⁰ The public consultation launched by the Agency invited feedback from various respondents on the publication of extracts from the European Register. The original deadline for the public consultation was planned for 5 December 2013. However, due to several requests from respondents, the response window was extended to 13 December 2013.

¹ Please see a link to the public consultation document: http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2013_R_06/PC_2013_R_06%20-%20Consultation%20paper.pdf

21 The respondents to the public consultation represented the interests of individual market participants, as well as of European and worldwide associations. The Agency received also one contribution from an individual citizen. The following table shows the country/region of respondents participating in the public consultation.

■ Table 1: Overview of respondents to the Agency's public consultation on the publication of the EU register of market participants

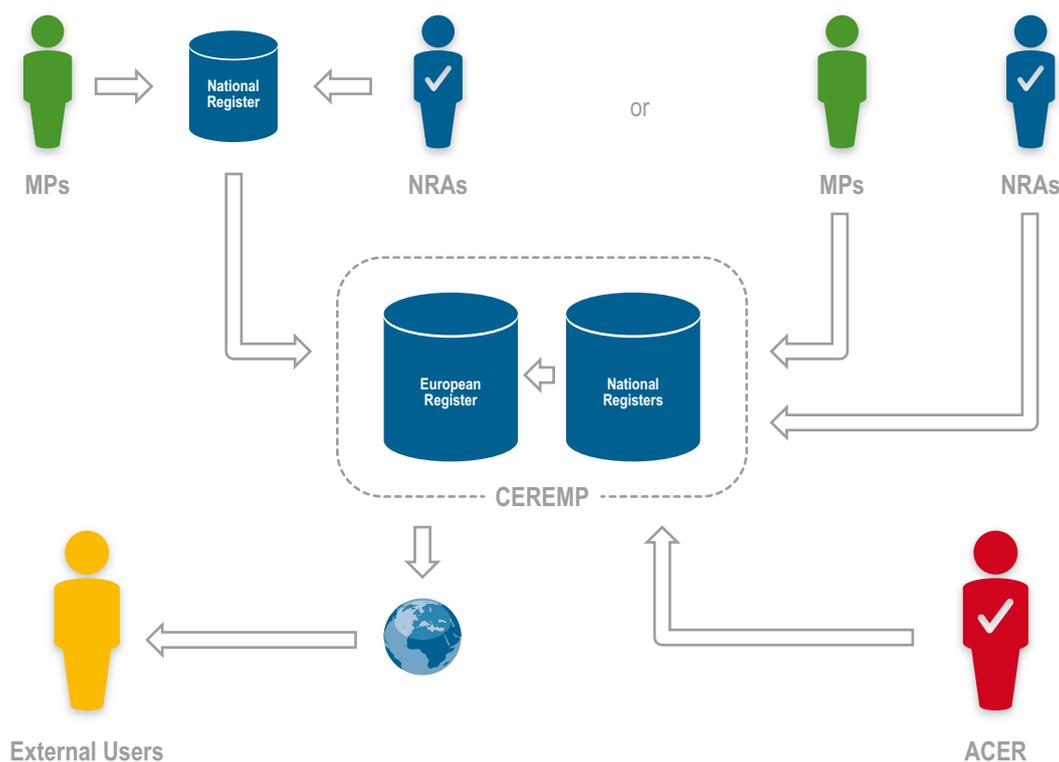
Country/Region	Number of responses
Czech Republic	1
EU-wide organisations	3
Finland	1
France	1
Germany	1
Slovakia	1
World-wide organisations	1

2.2.2 Software development

22 The technical development of CEREMP started in early 2013. CEREMP will maintain the European register of market participants, based on national registers established by NRAs.

23 In addition to using CEREMP for the establishment of the European register of market participants by the Agency, the system is also made available to NRAs for the establishment and management of their national registers.

■ Figure 5: Role of CEREMP



- 24 Therefore NRAs have two options regarding the registration system:
- an NRA can use CEREMP for managing its own national register of market participants (NRA type A) or;
 - an NRA can develop its own system (NRA type B). In case an NRA opts to develop its own registration system, it can either transmit the data from its national register to CEREMP via a batch upload or data entry (NRA type B1) or it can interface its own national system with CEREMP via web services (NRA type B2).
- 25 The development of CEREMP included the establishment of a registration system for NRAs type A and a mechanism that allows receiving and processing the data from national registers of NRAs type B.
- 26 In 2013, three NRAs opted to develop their own system for the registration of market participants, of which two chose to interface their own national systems with CEREMP via web services (NRA type B2) and one to transmit the data from its national register to CEREMP via batch upload or data entry (NRA type B1). The remaining NRAs decided to use CEREMP for managing their national register.
- 27 CEREMP is deployed in three phases: a test environment, a pre-production environment and a production environment. The following picture describes the lifecycle architecture of the CEREMP system:

■ Figure 6 : Deployment of CEREMP



- 28 Performance, penetration and load tests were performed in the testing environment at the end of 2013. Use-cases, which represent functions of the application, were gradually deployed into the prototype throughout the year.
- 29 In the period between November 2013 and January 2014, members of the Agency's IT Task Force tested the CEREMP platform. In total 20 NRAs tested the platform in order to reveal potential bugs, to improve its user-friendliness and to suggest additional functionalities to be developed before the go-live in 2014.

2.3 Data collection and data sharing

2.3.1 Policy developments

2.3.1.1 Input to the Commission on the records of transactions, including second set of recommendations

- ³⁰ According to Article 7(3), the Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with NRAs, competent financial authorities in the Member States, national competition authorities and ESMA. The purpose of the recommendations is to assist the Commission in the preparation of the implementing acts to be adopted in accordance with REMIT.
- ³¹ On 23 October 2012, the Agency provided the Commission with its first Recommendations on the Records of Transactions, including orders to trade. In these Recommendations the Agency indicated its intention to also develop recommendations on the records of transactions for balancing market contracts and transportation contracts and to consult relevant stakeholders ahead of the adoption of the acts.
- ³² Following consultations with ENTSO-E and ENTSO-G, the Agency provided the Commission on 26 March 2013 with its Recommendations on the Records of Transactions for balancing market contracts and transportation contracts.
- ³³ As regards the reporting of records of transactions in balancing market contracts, the Agency recommended that the collection of this data is postponed until the relevant network codes apply. Balancing market contracts should therefore not be included in the list of contracts to be reported at the initial stage. Until the entry into force of the relevant network codes, the NRAs may, on a regular basis, collect information and monitor balancing markets on the basis of their competences under the Third Energy Package, particularly pursuant to Articles 35 *et seq.* of the Electricity Directive² and Articles 39 *et seq.* of the Gas Directive³. According to the recommendations, the NRAs shall regularly inform the Agency about the balancing market developments and the outcome of their monitoring activities in the context of the cooperation with the Agency, according to Article 16(1), subparagraph 3 of REMIT.
- ³⁴ As regards the reporting of records of transactions of transportation capacity contracts, the Agency maintained its position expressed in its Recommendations of 23 October 2012. The implementing acts should stipulate a phased approach for transportation capacity contracts by delaying the reporting of records of transactions in transportation capacity contracts by six months. As expressed in the Recommendations of 23 October 2012, the records of transactions should include lifecycle information on the pre- and post-trade stages of a transaction, including information on the physical settlement of the contract. This should also apply to transportation capacity contracts.
- ³⁵ The Agency considers its recommendations as a sound basis for the development of the REMIT records of transactions and implementing acts. The recommendations were also made available to the European Parliament and the Council.
- ³⁶ In addition to the Recommendations sent to the Commission on 23 October 2012 and 26 March 2013, the Agency engaged in bilateral discussions with the Commission on various aspects of data collection throughout 2013.

² Directive 2009/72/EC concerning common rules for the internal market in electricity.

³ Directive 2009/73/EC concerning common rules for the internal market in natural gas.

2.3.1.2 Public consultation on RRM and RIS Guidelines

- 37 According to Article 8(1) of REMIT, market participants, or third parties on their behalf, shall provide the Agency with records of wholesale energy market transactions, including orders to trade. Third parties reporting on behalf of market participants include, *inter alia*, organised market places, trade matching systems or other persons professionally arranging transactions, trade reporting systems and trade repositories.
- 38 According to Article 8(5), market participants shall provide the Agency and NRAs with fundamental data related 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 liquefied natural gas (LNG) facilities, including planned or unplanned unavailability of these facilities, for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.
- 39 According to Articles 8(2) and (5) of REMIT, the Commission shall, by means of implementing acts, further define the details of the reporting of transactions, including orders to trade, and fundamental data. During 2013, the process of adopting such implementing acts by the Commission was ongoing.
- 40 For reasons of operational reliability according to Article 12 of REMIT, the Agency considers it necessary and appropriate that the reporting of records of transactions, including orders to trade, is performed through Registered Reporting Mechanisms (RRMs) and that the reporting of regulated information, i.e. inside information and transparency information on fundamental data, is performed through registered Regulated Information Services (RISs).
- 41 Efficient, effective and safe exchange and handling of information is achievable only if certain technical and organisational requirements are fulfilled by the reporting entities. Market participants, and third parties reporting on their behalf, who comply with these requirements shall be registered with the Agency.
- 42 On 22 March 2013, the Agency launched a public consultation on the registration of Registered Reporting Mechanisms (RRMs) and Regulated Information Services (RISs) for ensuring operational reliability according to Article 12 of REMIT. The public consultation document was prepared on the basis of the ACER Recommendations to the Commission of 23 October 2012⁴. In the consultation paper, the Agency outlined a first proposal for the technical and organisational requirements for the registration of RRMs and RISs. The public consultation document consisted of 11 questions and the consultation lasted until 13 May 2013. A public workshop was held on 25 April 2013 to discuss the public consultation document with stakeholders .
- 43 The public consultation invited feedback from stakeholders. The consultation resulted in a total of 28 responses, seven of which by European associations.

4 See Section 2.3.1.1.

■ Table 2: Overview of respondents to the Agency's public consultation on the RRM and RIS Guidelines

Country/Region	Number of responses
Austria	1
EU-wide organisations	7
France	3
Germany	9
Italy	1
Poland	1
Slovakia	1
Slovenia	1
Switzerland	1
United Kingdom	7

- 44 In general the respondents were in favour of the establishment of RRM for reporting records of transactions, including orders to trade, and RISs as reporting entities for regulated information. Further guidelines and detailed information, e.g. on technical standards, were requested. These can however not be specified until the implementing acts are adopted. Many respondents also stressed that ensuring operational and technical reliability of reporting of information under REMIT should be a key priority for the Agency.
- 45 The Agency intends to further consult relevant stakeholders in the course of 2014 and to publish the RRM and RIS requirements at the latest in parallel with the adoption of the Commission's implementing acts.

2.3.1.3 Public consultation on Technical standards for data reporting

- 46 When the REMIT implementing acts come into force, market participants will report transactions, including orders to trade, to the Agency in accordance with Article 8 of REMIT. Intensive planning was under way at the Agency in 2013 to prepare such transaction reporting.
- 47 Whereas the Agency's recommendations to the Commission of 23 October 2012 and 26 March 2013 proposed the items of information which are necessary to be reported, it did not specify a standard for those values to take. The Agency recognises that it is of paramount importance to ensure that the values or attributes taken by those items of information are well understood, defined and, where appropriate, that a common standard is adopted.
- 48 Analysis by the Agency has revealed that a working transaction reporting mechanism at EU level is in practice achievable only with strict adherence to such standards.
- 49 The Agency identified in early 2013 a set of potential common standard codes and technical standard formats, which it proposes to be used in the new reporting framework. The Agency understands that many formats and standards are well defined and have been in existence for a number of years. These formats and standards are used by market participants across many geographic boundaries. The Agency concludes that there is a possibility, if certain governance and technical changes are implemented, that the requirements, as outlined in the Agency's recommendations to the Commission, can be met by recognising such formats and standards. Recognition by the Agency of a standard and format means that market participants with an obligation to report data according to Article 8 of REMIT may choose to use such a recognised format through a designated RRM. Where a standard is not recognised by the Agency, the Agency's own technical reporting format and standards will apply by default.

- 50 On 22 March 2013, in parallel to the consultation on the RRM and RIS Requirements, the Agency launched a public consultation on the Technical Standards for Trade Reporting. This public consultation document was prepared on the basis of the ACER Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, of 23 October 2012. In the consultation paper, the Agency included a number of questions related to standard codes and technical standards for the reporting of trade data. The public consultation document included 12 questions, and the consultation lasted until 13 May 2013. A public workshop was held on 25 April 2013 to discuss the public consultation document with stakeholders.
- 51 The public consultation invited feedback from stakeholders. The consultation resulted in a total of 22 responses, five of which from European associations.

■ Table 3: Overview of respondents to the Agency's public consultation on the RRM and RIS Guidelines

Country/Region	Number of responses
Austria	1
Belgium	1
EU-wide organisations	5
France	2
Germany	10
Italy	1
United Kingdom	7
United States	1

- 52 Based on the technical standards that were consulted in 2013, the Agency intends to make public a Trade Reporting User Manual (TRUM) in 2014. The TRUM aims to facilitate reporting by explaining the details of the information to be reported in accordance with the Commission's implementing acts. It is intended to provide market participants with sufficient guidance to make informed decisions about their transaction reporting obligations. The Agency would therefore expect compliance departments and compliance officers of market participants with transaction reporting responsibilities, and third parties reporting on their behalf, to ensure that the TRUM is fully understood and that the necessary measures are implemented to ensure compliance with reporting obligations under REMIT.

2.3.1.4 Data sharing policy

- 53 Article 10(1) of REMIT lays down an obligation for the Agency to establish mechanisms to share trade and fundamental data with NRAs, the competent financial authorities of the Member States, the national competition authorities, ESMA and other relevant authorities. Before establishing such mechanisms the Agency shall consult with those authorities.
- 54 Article 10(2) also provides that access to data shall be granted only to authorities who have set up systems enabling the Agency to meet the requirements of operational reliability referred to in Article 12(1). Under the latter provision, the Agency is under the obligation to ensure the confidentiality, integrity and protection of, *inter alia*, fundamental and trade data, and to take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its system. An equivalent obligation as regards the treatment of data applies to the authorities who receive such data from the Agency⁵. The Agency shall also ascertain whether those authorities are able to maintain an equally high level of security⁶.
- 55 Furthermore, Article 7(2) of REMIT provides that, in order to cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets at EU level, NRAs shall have access to relevant information (i.e. relevant trade and fundamental data) held by the Agency. It further states that NRAs may also monitor trading activity in wholesale energy products at national level.
- 56 In 2013, the Agency started to develop its policy on data sharing with NRAs, in cooperation with those authorities. In doing so, the Agency has regard to the objectives pursued by REMIT. The definition of a data sharing policy continues in 2014.

2.3.2 Software development

2.3.2.1 Development of IT solutions for data collection

- 57 In the first half of 2013, the Agency started the development of IT solutions for data collection. Due to uncertainties regarding the final requirements for the IT solution, which heavily depends on the Commission's implementing acts, an iterative approach was adopted, in order to start the development without delays.
- 58 As a result three development stages have been planned to design and implement the IT solution, namely the ARIS Pilot stage, the ARIS Operational Prototype stage and the ARIS Production stage. The initial focus was on developing the basic formats and interfaces to collect the data and to work on the suitable logical data model to store and process the data efficiently. In addition, attention was paid to defining the workflows for the most critical processes (e.g. user management, data validation, feedbacks), as well as to integrating the various components and modules into a comprehensive ARIS IT platform.

5 See Article 12(1) of REMIT.

6 See Recital 23 of REMIT.

■ Figure 7: The ARIS development cycles



2.3.2.2 Pilot Project for data collection

- 59 REMIT envisages the collection of wholesale energy market data and the monitoring of wholesale energy markets by the Agency and the enforcement of the prohibitions against market abuse at national level. The Regulation confers powers to the Commission to adopt implementing acts as regards data collection by the Agency.
- 60 Whilst the preparation of the REMIT implementing acts by the Commission was ongoing in 2013, the Agency highlighted that data collection according to Article 8(1), (3), first subparagraph, (4) and (5) shall apply with effect from 6 months after the date on which the Commission adopts the relevant implementing acts. Given the short formal timeframe for the implementation of data collection, it was considered prudent to prepare for data collection and monitoring in advance. This was and is essential to ensure a smooth implementation of REMIT. Therefore, the Agency initiated and conducted a pilot focused on proving the basics of data collection.
- 61 On 11 July 2013, the Agency launched the first phase of the REMIT implementation Pilot Project, which ran to November 2013, and primarily concentrated on the collection of data through third parties reporting on behalf of market participants, e.g. trade reporting systems, organised market places, trade-matching systems, persons professionally arranging transactions, trade repositories and other third parties. 19 potential reporting entities took part in the first phase of the Agency's REMIT Pilot Project.
- 62 The operational objectives of the pilot were specified as follows:
- To gather input from parties that will be involved in data collection under REMIT on the majority of data types and related data, which REMIT requires.
 - To develop a working IT system prototype capable to collect the data.
 - To gradually improve and upgrade the prototype to become a fully functional ARIS.
 - To identify open issues and problems in the early phase of the ARIS implementation.
- 63 The Agency specified that it intends gradually to improve the functionality and reliability of the pilot hardware and software to realise a fully functional platform for data collection.
- 64 A Pilot Project's Participants' Group was established and its members and observers were alerted that they:
- will be asked to provide relevant data as requested by the Agency;
 - will be expected to provide their technical expertise for the purposes of the Pilot Project;
 - will get information on elements of prototype design relevant to data collection for the purpose of the pilot;
 - will be asked to provide comments/suggestions (e.g. on technical solution);
 - will be asked to provide specific technical input on data collection process (XML schemas, communication procedure, etc.).

Box 2: Activities performed during the first phase of the Pilot Project

- Default XML schemas developed for the data reporting, taking into consideration input received from pilot participants
- Testing environment set up and configured
- Pilot Project user manual prepared
- ARIS Tier 1 (data collection) interface deployed and ready
- ARIS Tier 2 (central data warehouse) data model designed (but not fully implemented)
- Testing environment for the ARIS Tier 3 (market monitoring software) prepared and data gateways built and tested, along with the deployment and configuration of four portfolio alerts
- Collection of anonymised data
- Analysis of data collected (by using the Agency's dedicated market monitoring software)

65 The main lessons learned from the first phase of the REMIT Implementation Pilot Project can be summarised as follows:

- The Agency proved that rapidly designing, developing, implementing and supporting an IT solution was possible. Though the pilot was limited in scope and duration, the Agency succeeded in ensuring the timely deployment of the required key deliverables by November 2013.
- The Agency provided support for multiple formats (XML schemas) in the pilot in order to be able to collect the data from as many pilot participants as possible without additional delays and extra effort required to prepare the data in specific format. The Agency also designed its own default set of schemas for every data type to be collected in the first phase. This approach did not have a significant effect on the pilot participants' ability to send the data even in their own native formats. Preliminary analysis by the Agency showed that no single format was fully suitable for data collection under REMIT. The Agency will therefore continue to develop and maintain its own default format, although other formats could be supported in the end solution provided that they allow reporting of all required data fields under the final implementing acts.
- Interaction with only a number of pilot parties and external contractors had a significant resource dedication impact on the Agency. It is expected that there will be an increasing number of parties involved in the second phase of the Pilot Project.
- The overarching ARIS technical architecture needs to be defined in greater detail to ensure that the development of all tiers is aligned with the requirements and that the planning is consistent.
- Significant effort will be required from market participants to properly prepare for data collection. The collection of data during the Pilot Project was delayed more than two months. According to the Agency's understanding, the main reasons for this were limitations on pilot participants' side related to availability of required data and lack of pilot participants' IT resources to properly prepare the data.

- 66 The outcome of the first phase of the Agency's REMIT Implementation Pilot Project served the Agency's needs to further prepare the data collection and monitoring under REMIT. The outcome and the input received from stakeholders is being used to further develop ARIS, and to prepare relevant documentation such as the Trade Reporting User Manual (TRUM) in parallel with the preparation and adoption of the REMIT implementing acts by the Commission.
- 67 On 7 November 2013, at a public workshop on REMIT implementation in Ljubljana, the Agency announced its intention to launch the second phase of the Agency's REMIT implementation Pilot Project. The second phase of the Pilot Project runs from December 2013 to June 2014. In the second phase of the Pilot Project, the Agency aims to further develop the data collection exercise, based on the Commission's draft implementing acts and using the ARIS Operational Prototype.

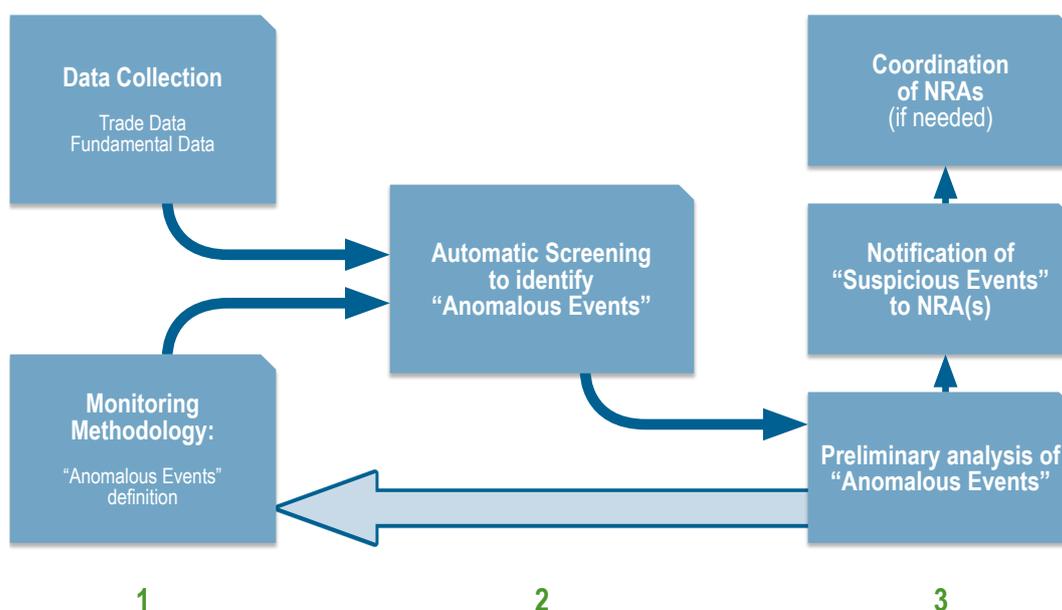
2.4 Market monitoring solution

- 68 According to Article 7 of REMIT, the Agency shall monitor trading activity in wholesale energy products to detect and prevent market manipulation, attempted market manipulation and trading based on inside information. According to Article 16 of REMIT, NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets, and ensure that the prohibitions of market manipulation, attempted market manipulation and insider trading are applied in accordance with Article 13 of REMIT. In this section, the Agency's market monitoring approach under REMIT is described based on the legal framework provided in REMIT.

2.4.1 Policy development

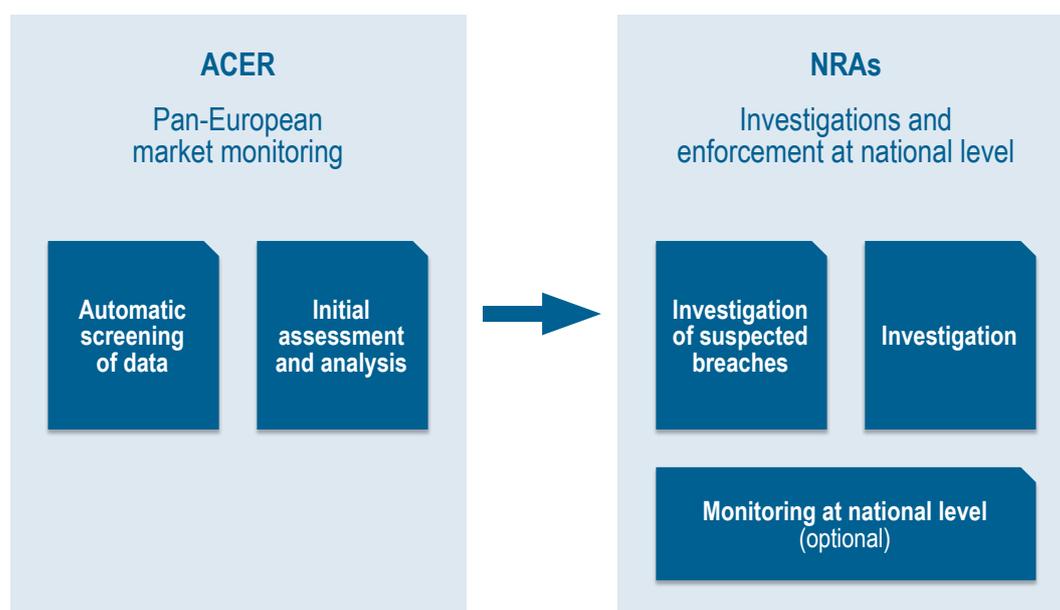
- 69 Since the beginning of the implementation of REMIT in 2011, the Agency has developed a market monitoring approach. This approach has been further developed during 2012 and 2013. The figure below shows a schematic view of the Agency's market monitoring approach.

■ Figure 8: The Agency's market monitoring approach



- 70 The automated screening will form part of the Agency's monitoring activities. Article 16(4) of REMIT also requires an initial assessment or analysis by the Agency prior to notifying a suspected breach of REMIT to the NRAs and prior to using its powers under Article 16(4) of REMIT. The following figure illustrates this two-step approach envisaged by the Agency, which is explained in more detail in the Section concerning the Agency's market monitoring strategy.

■ Figure 9: The Agency's market monitoring approach



2.4.2 Software customisation

- 71 In December 2012, the Agency concluded a Framework Contract with OMX Technology to provide the Agency with the SMARTS market monitoring system. This will enable the Agency to perform its market monitoring tasks according to Article 7(1) of REMIT (automated screening). A framework contract for the market monitoring system and a specific contract concerning the customisation of the software was concluded in December 2012. In 2013, the implementation of the SMARTS system commenced and will be concluded in line with the timelines for data collection following the implementing acts.
- 72 As a basis for the customisation of the monitoring software, a design study was conducted in the first half of 2013. This is standard practice at the commencement of all SMARTS implementations and can be aligned with best practices for the software development lifecycle, which typically commences with a requirements gathering or analysis phase. The key objective was to define in detail the solution requirements and propose a high-level design.
- 73 On-site workshops took place at the ACER premises. For example, a three-day session was held in March 2013 including the entire NASDAQ OMX implementation team and a range of industry experts from across Europe.

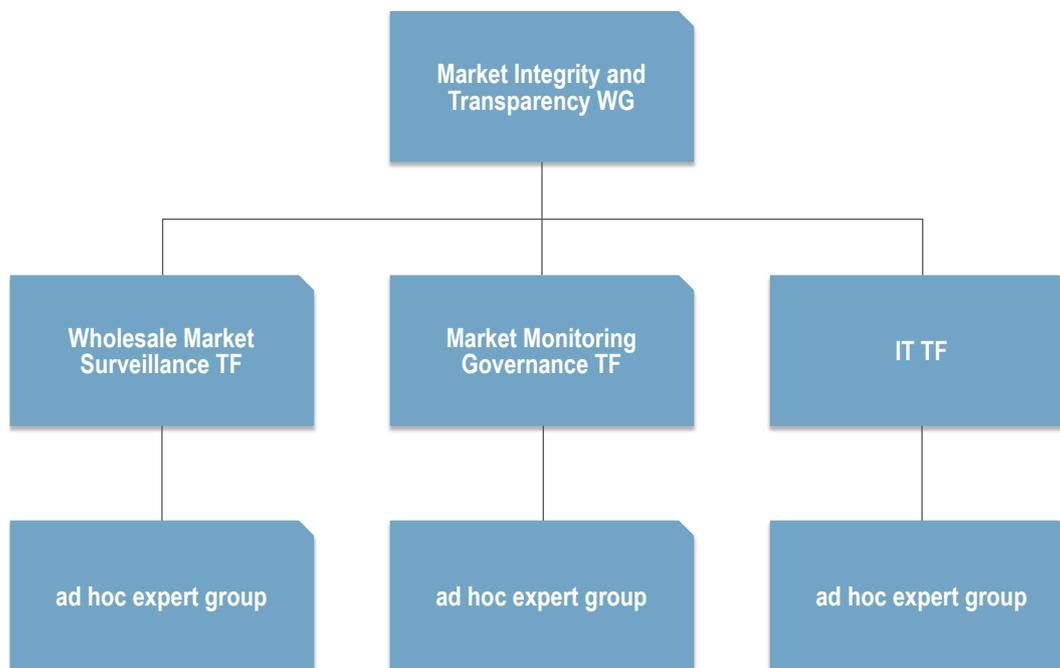
2.5 Coordination and cooperation framework

- 74 Regulatory cooperation is an essential element of REMIT. Close cooperation and coordination between the Agency and NRAs is necessary to ensure proper monitoring of energy markets. Coordination is needed between the ambits of responsibilities of the Agency (monitoring of the European market) and of NRAs (monitoring at national level and enforcement).
- 75 The creation of the Agency's Market Integrity and Transparency Working Group (AMIT WG) allows taking account of the early input from the NRAs on the Agency's work. Furthermore, the regular discussions in the Agency's Board of Regulators (BoR), which the Director consults on all REMIT implementation aspects and whose advice and opinions are given consideration by the Director, will continue to promote such collaboration and to ensure that a coordinated approach is taken to the implementation of the relevant rules.

2.5.1 Working Groups, Task Forces and Expert Groups

- 76 The AMIT WG was established by the Director in 2012. It brings together Agency staff and senior representatives of NRAs. The European Commission is also invited to participate. The following task force structure under the AMIT WG has been active in 2013:
- Market Monitoring Governance Task Force (MMG TF), dealing with issues such as the registration format and recommendations on data collection.
 - Wholesale Markets Surveillance Task Force (WMS TF), providing input for the continuous update of the non-binding ACER Guidance and facilitating cooperation and coordination of market monitoring practices.
 - IT Task Force (IT TF), dealing with the implementation of the IT systems for registration, data collection and data sharing, as well as IT security and other IT-related issues.
- 77 The AMIT WG and the Task Forces provide support to the Agency in carrying out its duties under REMIT.
- 78 Participants in the AMIT WG and Task Forces are bound by certain rules for their functioning, including measures in the areas of confidentiality and intellectual property rights.
- 79 Linked to each of the three Task Forces under the AMIT WG, the Agency established ad-hoc Expert Groups. Each ad-hoc Expert Group consists of up to ten industry experts from market participants, industry organisations, energy exchanges and IT providers. The goal of the Expert Groups is to advise and assist the Task Forces in their respective areas.

■ Figure 10: Overview of Working Group, Task Force and Expert Group structure



2.5.2 REMIT notification platform

⁸⁰ Following the entry into force of REMIT, market participants and persons professionally arranging transactions are obliged to fulfil the obligations described in:

- Article 3(4)(b) – Obligation for market participants to notify the Agency in case the exemption to the prohibition of insider trading is used;
- Article 4(2) – Obligation for market participants to notify the Agency and the NRA about the delay of the publication of inside information;
- Article 15 – Obligation for persons professionally arranging transactions to notify the NRA when they reasonably suspect that a transaction might breach Article 3 or 5 of REMIT (Suspicious Transaction Report, STR).

⁸¹ On 28 December 2011, the Agency launched a web application for the notification of such incidents to the Agency and to the NRAs. The Agency simultaneously published a guide on the website⁷.

⁸² In the second half of 2013, the Agency decided to update the web application for notifications and to prepare the new notification forms and to update the users' interface of the notification platform in the course of 2014.

⁷ <http://www.acer.europa.eu/remit/Pages/Important-information-for-market-participants.aspx>

2.5.3 REMIT Forum

⁸³ For the purpose of facilitating the exchange of opinions between NRAs and the Agency on issues related to REMIT, the Agency established the REMIT Forum in April 2012. The REMIT Forum is based on an information platform for the exchange of questions received from market participants and the discussion among NRAs and the Agency on possible answers. The general idea of the REMIT Forum is to provide a useful tool for ensuring harmonisation of views on REMIT among the NRAs and the Agency. The outcome of the discussion on the platform is used as input for the Guidance and the Q&A paper produced by the Agency⁸. The REMIT Forum is open only to staff from NRAs and the Agency involved in REMIT implementation. During 2013, 17 questions were posted on the Forum and discussed between representatives from the Agency and NRAs.

2.5.4 Cooperation at Union level

⁸⁴ The Agency aims to ensure a coordinated and consistent approach to address market abuse in wholesale energy markets, which encompasses both commodity markets and derivatives markets. It also aims to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way.

⁸⁵ For this purpose, the Agency cooperates closely with NRAs, ESMA, the competent financial market authorities of Member States and, where appropriate, national competition authorities. The Agency may also establish strong links with major organised market places.

⁸⁶ The scope and practical terms for implementing the cooperation with NRAs, ESMA and organised market places have been defined in Memoranda of Understanding (MoUs). Whilst the MoU with NRAs is a multilateral agreement, the MoUs with ESMA and with organised market places are bilateral.

⁸⁷ These MoUs are not intended to replace existing legislation and nothing in these MoUs is intended to restrict, extend or alter the powers, functions or duties of the Agency or any of the signatories.

2.5.4.1 MoU between the Agency and NRAs

⁸⁸ There are several references in REMIT to the cooperation between the Agency and NRAs. In order to ensure a smooth cooperation between the Agency and NRAs under REMIT, the Agency started to work on establishing a multilateral MoU in 2012.

⁸⁹ The purpose of the MoU is to define the scope and practical terms of the cooperation under Articles 7 and 16 of REMIT between the Agency and NRAs, with the aim of promoting an effective, efficient and coordinated monitoring of wholesale energy markets as required by REMIT. The purpose is to set out the procedures that the Agency and NRAs intend to follow, and is not intended to create any additional obligations or to replace or amend existing legislation.

⁹⁰ The participation in the MoU is based upon the individual decision of each NRA. After being discussed among the Agency and NRAs, both in the AMIT WG and in the WMS TF, as well as in the BoR, the MoU was finalised in 2013 and signed by the Agency and all 28 NRAs on 17 July 2013.

⁸ See section 2.5.3 and 2.5.4.

- 91 In accordance with the MoU, the cooperation between the Agency and NRAs shall be based on the following principles:
- Distribution of powers. The clauses of this MoU shall be interpreted and applied in such a way as to ensure that the distribution of powers between the Agency and NRAs set forth by law, and in particular by REMIT, is not altered.
 - Mutual collaboration. Both the Agency and NRAs shall cooperate in order best to fulfil their respective functions, as established in REMIT and other applicable legislation, and in the spirit of mutual trust and understanding.
- 92 Apart from general principles of cooperation and coordination, the MoU sets out the procedures that the Agency and NRAs intend to follow as regards notifications of suspected breaches of the REMIT, requests to supply information to the Agency, requests to commence investigations of suspected breaches and requests to establish and coordinate the so called investigatory groups where the Agency considers that a possible breach has, or has had, cross-border impact.

2.5.4.2 MoU with ESMA

- 93 Due to the numerous interactions between REMIT and EU financial market legislation, there are several references in REMIT to the cooperation between the Agency and ESMA, in particular on the exchange of information. Therefore, the Agency aimed at closely cooperate with ESMA even ahead of the entry into force of REMIT.
- 94 Already in October 2011, the Agency and ESMA established ad-hoc cooperation on different topics of common interest. In the beginning, this ad-hoc cooperation mainly concerned the parallel developments in the implementation of REMIT and Regulation (EU) No 648/2012⁹ (EMIR), and aimed at a coordinated approach for data collection under REMIT and EMIR. It also included the sharing of experiences in IT implementation of data collection and data sharing.
- 95 The cooperation developed further in 2012, both with ESMA and major national financial market authorities, and was extended to the interdependencies between REMIT, EMIR, Directive 2003/6/EC on insider dealing and market manipulation (market abuse) (MAD)¹⁰ and Directive 2004/39/EC on markets in financial instruments (MiFID)¹¹ as well as to the ongoing review of EU financial market legislation. Since REMIT, contrary to MiFID and EMIR, foresees data collection directly at Agency level, the Agency benefited from the experiences of major national financial market authorities collecting data under MiFID.
- 96 In order to facilitate a smooth cooperation, the Agency and ESMA agreed in 2013 to put in place an agreement for such cooperation. The MoU between the Agency and ESMA was signed on 18 July 2013.
- 97 The MoU is a statement of intent to consult, cooperate and to exchange information in connection with the regulatory responsibilities of the Agency and ESMA in relation to wholesale energy markets, which encompass both commodity and derivatives markets, in a manner consistent with, and permitted by, the rules and requirements that govern the Agency and ESMA. The Agency and ESMA anticipate that cooperation will primarily be achieved through ongoing consultations, exchange of information and participation in meetings of the Agency and ESMA working groups and task forces. The MoU does not prejudice, limit or alter the terms and conditions of any bilateral or multilateral MoU or other arrangements concerning cooperation in regulatory matters between or among either the Agency and national regulatory authorities, ESMA and competent financial authorities or the Agency, ESMA and any other competent authority. The Agency and ESMA will periodically review the functioning and effectiveness of the cooperation arrangements between them with a view, *inter alia*, to expanding or altering the scope or operation of this MoU.

9 Regulation (EU) No 648/2012 on OTC derivatives, Central Counterparties (CCPs) and Trade Repositories (TRs) (EMIR).

10 <http://www.abbl.lu/sites/abbl.lu/files/wysiwyg/MarketAbuseDirective2003.pdf>

11 <http://eur-lex.europa.eu/>

2.5.4.3 MoU between the Agency and organised market places

- 98 According to Recital 18 of REMIT, the Agency may establish strong links with major organised market places when performing its tasks under REMIT. The development of strong links with major organised market places, in particular by exchanging of views and experiences on wholesale energy market monitoring principles and practices, will assist the Agency in performing its monitoring tasks under REMIT in an effective and efficient way.
- 99 Following discussions between the Agency and representatives from major organised market places, including both energy exchanges and energy brokers, a MoU between the Agency and organised market places concerning cooperation on market monitoring under REMIT was agreed.
- 100 The purpose of the MoU is to set out the content and procedures for the cooperation between the Agency and major organised market places on issues related to market monitoring under REMIT. Under the MoU, market monitoring experts from organised market places and the Agency will cooperate to share general principles and best practices regarding market monitoring. This will help to promote a consistent Europe-wide approach to wholesale energy market monitoring. Moreover, the Agency may request information and clarification from market surveillance experts at organised market places in relation to their market data, when assessing and monitoring wholesale energy markets in accordance with Article 7(1) of REMIT.
- 101 The MoU is not intended to create additional obligations or to replace existing legislation. Nothing in the MoU is intended to restrict, extend or alter the powers, functions or duties of the Agency, the organised market places or other competent authorities.
- 102 The cooperation under the MoU is based upon the individual decision of each major organised market place.
- 103 The MoU was finalised in 2013. By December 31 2013, eight organised market places had signed the agreement.

Market Monitoring and Coordination



3 The Agency's market monitoring and coordination activities under REMIT

3.1 Introduction

¹⁰⁴ REMIT introduced explicit prohibitions for market manipulation, attempted market manipulation and insider trading, which took effect immediately as the Regulation entered into force on 28 December 2011. Market participants are also under the obligation to publish inside information and to notify the Agency and the relevant NRA(s) and competent authority of any delay in such a publication. Furthermore, trading venues and other persons professionally arranging transactions in wholesale energy products are required to establish and maintain effective arrangements and procedures to identify breaches of the market abuse prohibitions and notify NRAs of any suspected instance. Therefore, the Agency is called to act on instances of delayed publication of insider information or market manipulation and to coordinate cross-border cases.

¹⁰⁵ In this chapter, the Agency's strategy for wholesale market monitoring is described, based on the legal framework provided in REMIT. This chapter also includes an overview of the cases of potential breaches of REMIT in which the Agency was involved during 2013, as well as an assessment of the operation and transparency of market places and other ways of trading in EU wholesale energy markets.

3.2 Guidance to NRAs on the application of REMIT

3.2.1 The Agency's mission and role of the guidance

¹⁰⁶ The Guidance to NRAs on the application of REMIT, the third edition of which was published by the Agency on 7 November 2013, illustrates, *inter alia*, the Agency's understanding of the market abuse definitions of REMIT. Market abuse means insider trading and market manipulation, which became explicitly prohibited with the entry into force of REMIT.

3.2.2 Market abuse definitions of REMIT

¹⁰⁷ The market abuse definitions of REMIT are explained into detail in the Agency's Guidance. Box 3 summarises the seven types of market abuse.

Box 3: Seven types of market abuse

Insider trading – when an insider trades, or tries to trade, in wholesale energy products on the basis of inside information relating to that wholesale energy product, Article 3(1)(a) of REMIT.

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, Article 3(1)(b) of REMIT.

Recommending on the basis of inside information – where an insider is recommending or inducing, on the basis of inside information, another person to acquire or dispose of wholesale energy products to which that information relates, Article 3(1)(c) of REMIT.

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, Article 2(2)(a)(i) and (3)(a)(i) of REMIT.

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, Article 2(2)(a)(ii) and (3)(a)(ii) of REMIT.

Transactions involving fictitious devices or any other form of deception – trading, or placing orders to trade, which employs fictitious devices or any other form of deception or contrivance, Article 2(2)(a)(iii) and (3)(a)(iii) of REMIT.

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 or ought to have known the information to be false or misleading, Article 2(2)(b) and (3)(b) of REMIT.

3.2.3 Obligations of persons professionally arranging transactions

¹⁰⁸ Any person professionally arranging transactions in wholesale energy products, who reasonably suspects that a transaction might breach Article 3 or 5 of REMIT, shall notify the competent NRA without further delay of all relevant information available. Where not all the relevant information is available at the time of notification, the notification shall include at least the reasons why the notifying person suspects that the transaction might constitute insider dealing or market manipulation. All remaining information shall be provided to the competent authority as soon as it becomes available.

Box 4: Market monitoring and persons professionally arranging transactions

Article 15 of REMIT states that persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5. Further on, the Regulation states that 'any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 shall notify the NRA without further delay'.

In 2013, the Agency circulated a questionnaire to persons professionally arranging transactions in order to have an overview of the market monitoring procedures at organised market places. An overview of the responses is presented below.

The data sources used for market monitoring at organised market places across Europe generally include:

- trading system of the organised market place for transactions, orders, flows, capacities etc.
- Transmission System Operator (TSO) data on capacities, flows, production, consumption etc.
- inside information platforms and Urgent Market Messages (UMMs)
- other public sources such as Reuters, Bloomberg, Platts etc.

The majority of respondents are using proprietary software for market surveillance in order to detect different types of market manipulation and insider trading.

The market monitoring procedures differ significantly between market places. Among other things, the procedures in place depend on the type of products traded, the geographical area covered and the size of the exchange. Some general steps can, nevertheless, be identified as a general market surveillance process at organised market places in Europe:

1. The market surveillance team gathers available information. This includes contact with market participants if necessary, usually by email or recorded phone call.
2. A preliminary assessment of the relevant information gathered is performed.
3. Considerations and analysis against the relevant regulations and market conduct rules are made.
4. Notification (according to article 15 of REMIT) to the relevant NRA when there are reasonable grounds to suspect that there has been a breach of REMIT is made. All respondents state that there is a good cooperation with the relevant NRA(s).

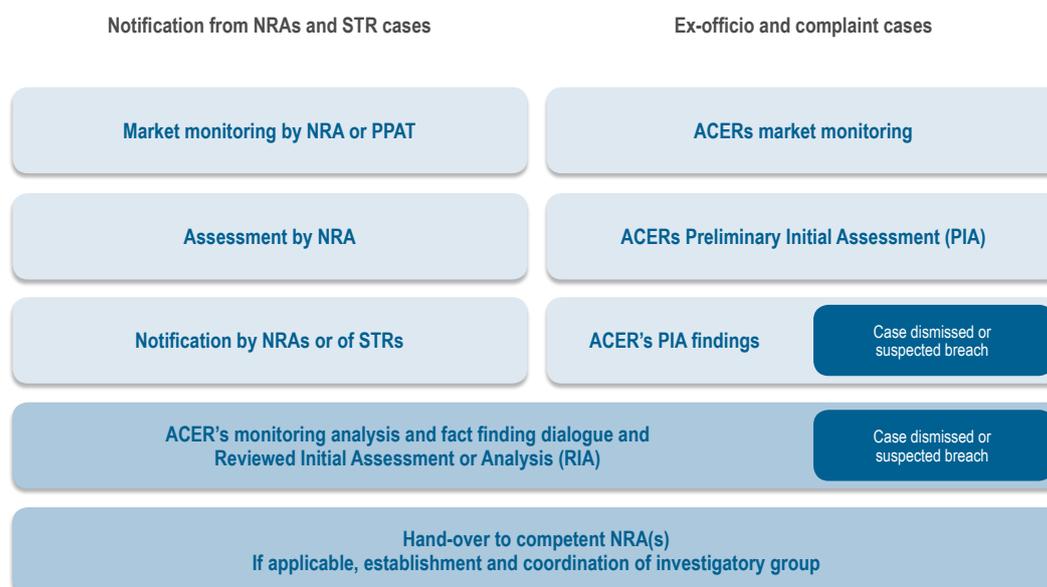
The wording of REMIT regarding the notification to NRAs 'without further delay' implies that the relevant NRA is to be informed immediately once a reasonable suspicion is justified by the preliminary analysis of persons professionally arranging transactions. A common understanding among organised market places is that the requirement to notify 'without further delay' does not relate to the task of establishing whether there is a reasonable suspicion or not, but rather to what is done once a reasonable suspicion is established. Organised market places also state that what is to be considered as "without further delay" will depend on the level of detail that is possible to gather and that is required when reporting to the NRA. According to organised market places this should be agreed between the relevant exchange and the NRA.

As for the respondents, all organised market places produce both internal and external reports and newsletters related to their ongoing work. Some market places also provide written guidance along with the market conduct rules of the respective market place.

3.3 The Agency's market monitoring strategy

- 109 Whilst the Agency is responsible for the monitoring of wholesale energy markets at pan-European level, NRAs may monitor trading activity at national level. Where the Agency suspects that there has been a breach of the provisions in REMIT, it has the power to request information from NRAs, to request NRAs to commence an investigation, and to establish and coordinate investigatory groups in case the suspected breach has cross-border impacts. However, the Agency can only make such requests to NRAs on the basis of initial assessments or analysis. Where an NRA has reasonable grounds to suspect a breach of the provisions in REMIT has occurred, it shall without delay inform the Agency.
- 110 On the basis of the legal framework provided in Articles 7, 13 and 16 of REMIT, during the second part of 2013, the Agency began to further elaborate its market monitoring strategy by developing, together with NRAs, a Market Monitoring Handbook. The purpose of this handbook is to outline the market monitoring processes and structures at the Agency's Market Monitoring Department and the coordination and cooperation between the Agency and NRAs and between NRAs concerning case investigation. The handbook will also provide an overview of market monitoring processes among persons professionally arranging transactions. The handbook will not be a public document but for internal use among the concerned parties only.
- 111 The Market Monitoring Handbook will be further developed in the course of 2014.
- 112 According to the Agency's market monitoring strategy, the Agency can be notified by cases in two different ways; i) through the in-house market monitoring or complaints by a third party, i.e. *ex officio* cases or ii) notifications through NRAs, the Financial Market Authorities (FMAs) or other competent authorities.
- 113 The following flowchart shows the processes of the two types of case.

■ Figure 11: Case handling processes.



- 114 The following sections will explain the two types of case origins along with the case handling procedures at the Agency.

3.3.1 Notifications through NRAs, FMAs or other competent authorities

- 115 According to Article 16(2) of REMIT, the NRAs are obliged to inform the Agency without delay in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out either in that Member State or in another Member State. This notification obligation shall enable the Agency to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. This is why the notification obligation applies regardless of whether the case has a cross-border impact or not.
- 116 In addition to NRAs, according to Article 16(3)(c) of REMIT, the competent FMA of a Member State also has a notification obligation towards the Agency and ESMA. The notification obligation applies where the competent FMA of a Member State has reasonable grounds to suspect that acts in breach of Articles 3 and 5 of REMIT are being, or have been, carried out on wholesale energy products in another Member State.
- 117 Also, according to Article 15 of REMIT, persons professionally arranging transactions in wholesale energy products who reasonably suspect that a transaction might breach Article 3 or 5 shall notify the national regulatory authority without further delay.
- 118 In order to facilitate all parties, the Agency has developed an electronic form for the notification, primarily by, but not limited to, persons professionally arranging transactions, of suspicious transactions; a Suspicious Transaction Report (STR).¹² If the STR is submitted using the electronic form on the Agency's website, the relevant NRA and the Agency are simultaneously notified about the suspicious event. Hence, through the STR, the obligation on persons professionally arranging transactions under Article 15, to notify suspicious events, and the obligation on the NRAs according to Article 16(2), to notify the Agency, are jointly fulfilled.
- 119 In the left hand scenario described in the above-mentioned flowchart, a suspicious event can be detected through the monitoring activities of NRAs or through the monitoring activities of persons professionally arranging transactions; in this latter case they are reported to the relevant NRA through an STR. The NRA assesses the case and if there are reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out either in that Member State or in another Member State (i.e. not limited to cross-border cases), the NRA notifies the Agency. In case a breach of REMIT cannot be ruled out on the basis of the notification or the STR, the case is forwarded to the Agency's Market Conduct Team for further analysis. The appointed case officer carries out a review of the NRA's initial analysis. The monitoring activities may include a fact-finding dialogue, e.g. with NRAs, national financial authorities or market surveillance experts from organised market places. If the Agency believes that the possible breach has cross-border impact, an investigatory group consisting of concerned NRAs is established.

3.3.2 *Ex officio* cases dealt with by the Agency

- 120 *Ex officio* cases were limited in number in 2013 given the limited data available to the Agency before the systematic data collection is implemented on the basis of the Commission's implementing acts. However, the Agency already opened a number of *ex officio* cases on the basis of information provided by stakeholders.
- 121 In the scenario described in the right hand of the above-mentioned flowchart, a suspicious event is detected by the Agency during its day-to-day market monitoring or is brought to the Agency's attention through a complaint from a market participant or third party. At this point, a case officer is appointed from the Agency's Market Surveillance Team. Following an analysis of the relevant data using the Agency's dedicated market monitoring software, a Preliminary Initial Assessment (PIA) is prepared. If the PIA concludes that there are no grounds for suspecting a breach of REMIT, the case is dismissed. In case a breach of REMIT cannot be ruled out on the basis of the PIA, then the case is forwarded to

12 STRs may also be submitted to the Agency and to NRAs by market participants or other stakeholders.

the Agency's Market Conduct Team for further analysis. During this further analysis, an internal legal review of the case is carried out by a legal expert from the Legal and Policy Team who has not been part of the monitoring team. Following additional fact finding and an internal legal review of the case, a Reviewed Initial Assessment (RIA) is drafted. On the basis of the RIA, the Agency either dismisses the case or finds reason to suspect that a breach of REMIT might have occurred. In the latter case, the Agency will hand the case over to the competent NRA, together with relevant documentation regarding the suspected breach. If the Agency believes that the possible breach has cross-border impact, an investigatory group consisting of concerned NRAs is established. Establishment and coordination of investigatory groups.

3.3.3 Establishment and coordination of investigatory groups

¹²² When the suspected breach has a cross-border impact, the Agency establishes and coordinates an investigatory group, consisting of representatives of the concerned NRAs, in order to investigate whether REMIT has been breached and in which Member State the potential breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent FMA or other relevant authority in the investigatory group.

3.4 Case overview

¹²³ Taking into account that data collection under Article 8 of REMIT did not take place in 2013, the Agency relied on notifications of suspected breaches of REMIT from NRAs, persons professionally arranging transactions and on public sources for its market monitoring activities. This section provides a brief overview of the cases concerning potential breaches of REMIT that were taken up by the Agency in 2013. In general, the Agency's policy is not to comment on its reviewing of a case. However, the Agency does provide the following statistics and illustrative examples on case reviews and cases closed with no sanctions. This approach will be valid also in future annual reports on the Agency's REMIT activities.

3.4.1 Statistics on case reviews

¹²⁴ In 2013, a total of 13 cases¹³ of potential breaches of the REMIT provisions were reviewed by the Agency. In some instances, potential breaches of several REMIT provisions were considered. By the end of 2013, two of these cases were closed while 11 were still reviewed.

- Five cases related to the breach of the insider trading prohibition in Article 3 of REMIT. One case related to potential insider trading (Article 3(1) of REMIT), non-effective disclosure of inside information (Article 4(1) of REMIT) and also a potential breach of MAD¹⁴. The case was brought to the Agency's attention through a STR submitted by a market participant. Since the case potentially had a cross-border impact, the Agency established an investigatory group consisting of several concerned NRAs. This case was still under the Agency's review at the time of the publication of this report.
- Six cases involved the potential breach of the obligation to publish inside information under Article 4 of REMIT. One case was investigated as a result of the Agency's review of notifications under Article 4(2) of REMIT. Another case reviewed by the Agency included a significant increase in electricity prices observed in the Baltic Elspot area. The Agency together with the three Baltic NRAs and Nord Pool Spot's (NPS) Market Surveillance investigated if there were any basis for suspicions of breach of REMIT or the Market Conduct Rules. No breach of REMIT was found, but a non-public warning was given by NPS to members involved, due to breaches of the disclosure requirements set out in the Market Conduct Rules.

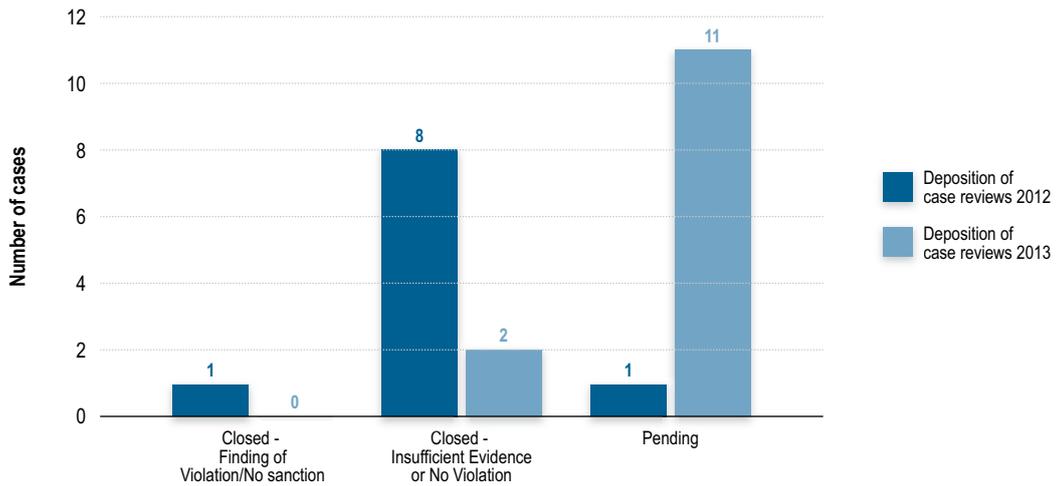
¹³ 12 cases opened in 2013 and one pending case from 2012.

¹⁴ <http://www.abbl.lu/sites/abbl.lu/files/wysiwyg/MarketAbuseDirective2003.pdf>

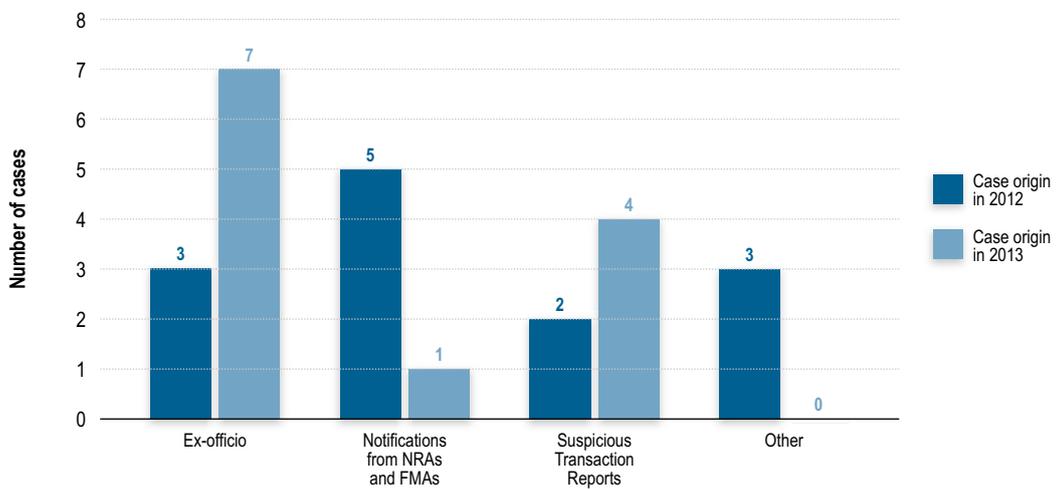
- Eight cases were considered as a potential breach of the market manipulation prohibition in line with Article 5 of REMIT. One case related to the potential manipulation of the gas market in Great Britain on 28 September 2012. The case was closed by the competent authorities that reviewed the case in 2013 as no evidence of market manipulation could be found.

125 The following figures give an overview of the cases dealt with by the Agency in 2013:

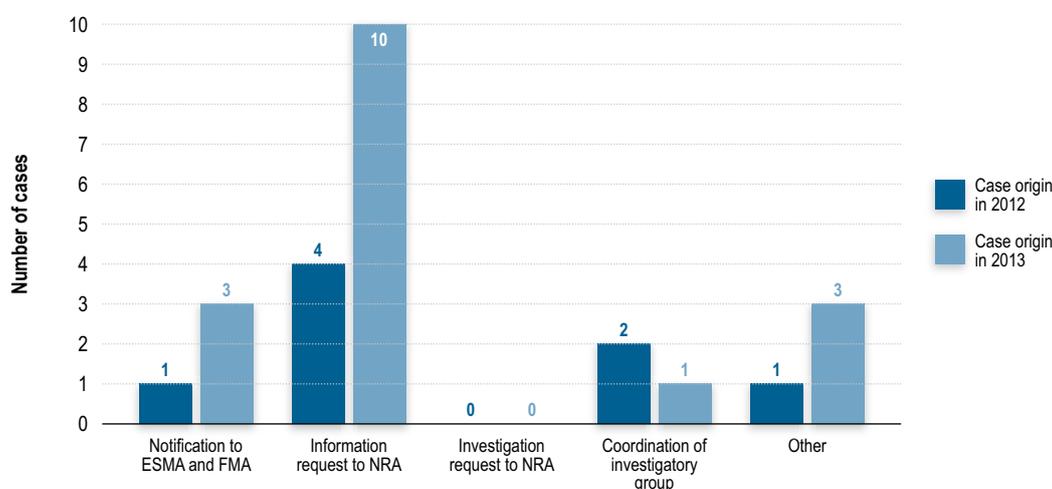
■ Figure 12: Disposition of case reviews



■ Figure 13: Case origin by reviewed cases



■ Figure 14: Case activities by the Agency



¹²⁶ The Agency believes that the number of cases which it will have to review will grow in the future, in particular following the start of automated data collection on the basis of the implementing acts.

3.4.2 Illustrative case reviews closed with no sanction

¹²⁷ In a continuing effort to promote transparency while supporting the compliance efforts of market participants, the following illustrations describe selected instances where the Agency's staff undertook a review, but took no further action. The following information is intended to provide guidance to the public and to market participants as to why the Agency chose not to pursue further action, while preserving the confidential nature of the case reviews. This information also elucidates the close cooperation between the Agency and NRAs and the crucial role that NRAs play in the investigation and enforcement of REMIT.

¹²⁸ **Disclosure of inside information:** A market participant in a Member State had planned maintenance at a power station. This was published in an Urgent Market Message (UMM). The planned maintenance was not taken into account in the market participant actions on the market. As the market participant provided incomplete information to the market while it participated on the market as a seller, the market participant was given a warning by the relevant NRA.¹⁵

¹²⁹ **Potential market manipulation in the wholesale electricity market:** The Agency observed a significant increase in electricity prices in the Baltic Elspot areas for delivery on 25 June 2013 and contacted the competent NRAs. NPS's Market Surveillance was contacted by all three Baltic NRAs regarding the high prices, and was asked to investigate whether there was any suspicion of breach of REMIT. NPS's Market Surveillance investigated the matter and attended a meeting with the Baltic NRAs along with ACER and the competition authorities. However, no cases of breaches of REMIT were found.¹⁶

¹³⁰ **Potential market manipulation in the wholesale gas market:** On 7 November 2013, in the United Kingdom, the Financial Conduct Authority (FCA) and Ofgem concluded the review of the allegations of manipulation of the gas market on 28 September 2012.¹⁷ The physical gas market is directly regulated by Ofgem for market abuse purposes, with the FCA responsible for regulating the financial derivatives based on this market. Both competent authorities concluded that they could find no evidence in this instance of market manipulation. In light of these findings, both Ofgem and the FCA considered that no further action was required in connection with the allegations. Ofgem and the FCA announced

¹⁵ See NPS quarterly reports for Market Surveillance.

¹⁶ See NPS quarterly reports for Market Surveillance.

¹⁷ See press releases from Ofgem (<https://www.ofgem.gov.uk/press-releases/ofgem-statement-allegations-gas-market-manipulation>) and FCA (<http://www.fca.org.uk/news/statements/statement-gas-market-manipulation>).

that they will continue to monitor energy and financial markets, and that they will work together in order to consider any evidence of misconduct. The Agency was notified about the case by the competent authorities and had close contacts with the competent authorities throughout their review.

Box 5: Benchmark manipulation

Benchmark price is the price per unit of quantity of a product traded that serves as a guideline for other trades in the same, similar or related products. Depending on the levels of transparency and liquidity of the markets, benchmark prices may result from publicly available data on trades or from assessments from Price Reporting Agencies or other entities based on voluntary and privately reported trades/bids/asks. Benchmark prices apply to many commodities and also to electricity and natural gas products.

In 2012 and 2013, the manipulation of benchmark prices was a recurrent topic among investigatory and enforcement authorities around the globe. The most visible investigations involved the financial, commodities and energy sectors and highlighted concerns about the overreaching negative impacts of price benchmarks manipulation.

In December 2013, following a two-year investigation into manipulation of interbank lending rates, the European Commission imposed record fines of €1.7bn on eight financial institutions as part of two settlement decisions relating to euro and yen interest rate derivatives. Proceedings against other banks in this investigation are ongoing, and a number of similar probes into price benchmarks in the financial sector have been launched. US and UK financial regulators are, in parallel, investigating the alleged manipulation of a benchmark measure tied to interest-rate swaps (ISDAFix). More recently, the U.S. Securities and Exchange Commission (SEC) and the European Commission announced that they are conducting parallel investigations on whether currency traders at the world's biggest banks distorted prices for options and exchange-traded funds by rigging benchmark foreign-exchange rates. US Commodity Futures Trading Commission (CFTC) also launched an inquiry into metal warehousing and the impact that a warehousing system may have on metals pricing, and financial regulators in the US and UK initiated a review of global benchmarks tied to gold.

In 2013 investigations of potential benchmark price manipulation were significantly extended to the energy sector, namely to the oil (crude oil, refined oil products and biofuels) and natural gas industries.

In May 2013, the Commission conducted a dawn raid to Platts and major oil companies. The Commission had concerns that the companies may have colluded in reporting distorted prices to a Price Reporting Agency to manipulate the published prices for a number of oil and biofuel products. Furthermore, the Commission had concerns that the companies may have prevented others from participating in the price assessment process, with a view to distorting published prices.

In 2013 at least two investigations of potential benchmark price manipulation in the gas industry were conducted under REMIT¹⁸. In November 2013, Ofgem published a statement into allegations of gas market manipulation, following the conclusions of its investigation on NBP prices. According to Ofgem, specific allegations were made concerning trading on 28 September 2012 in the period leading up to 4.30pm, when price reporting agencies produce a benchmark price for the day. Such benchmark prices are often used in a range of other contracts. It was alleged that gas was sold at a price that was lower than the price of the best bid to buy gas at the time, in order to manipulate the benchmark price produced by price reporting agencies.

Ofgem together with the FCA assessed whether the trading in the period around 4.30pm might have been manipulative. A consolidated order book of trading on the day was developed so that the market conditions and trading positions of relevant market participants could be fully understood. This included contracts priced by reference to price reporting agencies' closing prices.

¹⁸ See also Illustrative case reviews

The sellers involved in the six suspicious trades provided explanations for the transactions they entered into, supported by relevant confidential information, to demonstrate that their trading activity was not improper. According to Ofgem and the FCA, these explanations were credible and no evidence was found which disputed the explanations provided.

Although, in the most recent investigations on benchmark pricing manipulation in the energy industry market abuse wasn't supported by the collected evidence, as the industry evolves towards a stronger use of benchmark prices, particularly in gas, it is expected that more investigation may emerge in the coming years.

REMIT is a central piece for action against benchmark manipulation in the electricity and gas industries. The Agency and NRAs are developing surveillance systems to identify potential benchmarking price manipulations. Any risk of manipulation of benchmarks may undermine market confidence, cause significant losses to investors and distort the real economy.

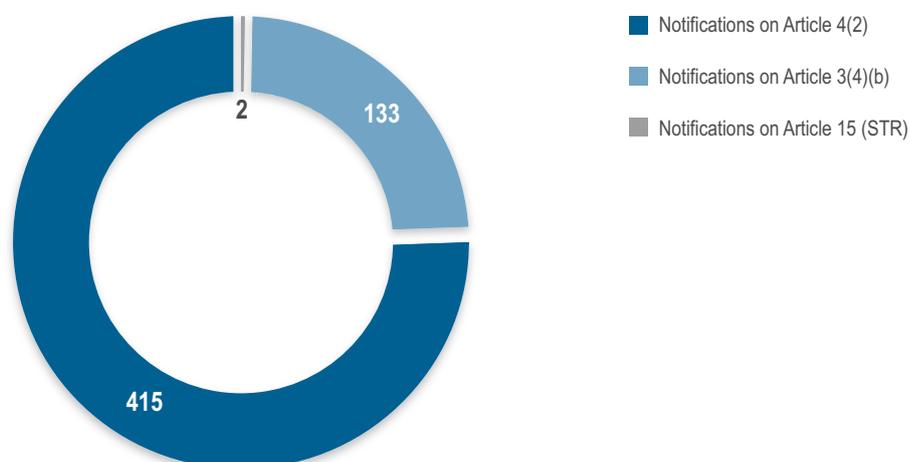
Even small distortions of assessed prices may have a significant impact on the prices of indexed energy products, potentially harming final consumers. For example, according to the Commission, a manipulation of just one basis point (0.01 percentage points) of the LIBOR fix with derivative contracts worth 10 trillion euro referenced to it, even during a short period of time, could have an impact of 250 million euro.

3.4.3 Notifications of delayed disclosure of inside information

¹³¹ Article 3(4)(b) and Article 4(2) of REMIT provide for exemptions from the obligation to timely publish inside information and from the prohibition to trade on this information before it is published in a number of specified cases. In all these cases, however, the relevant information should be reported to the Agency and the relevant NRA without delay. In order to assist those market participants who are subject to the obligations in Article 3(4)(b) and Article 4(2) of REMIT, the Agency has developed a standard notification format, based on the experiences in financial markets, and recommended its adoption by all NRAs. The relevant electronic format was published on the ACER website on 28 December 2011.

¹³² In 2013, the notification platform received 133 notifications on Article 3(4)(b), 415 on Article 4(2) and 2 on Article 15 (STR). It is important to note that in several cases the STR notifications were sent to the Agency not via the notification platform, but through direct emails addressed to the Agency.

■ Figure 15 : Breakdown of notifications submitted to the Agency in 2013



3.5 Assessment of the operation and transparency of different categories of market places and ways of trading

3.5.1 Introduction

- ¹³³ According to Article 7(2) of REMIT, the Agency shall annually assess the operation and transparency of different categories of organised market places and ways of trading.
- ¹³⁴ However, as data availability at this stage is very limited to the Agency without data collection on the basis of the Commission's implementing acts, the assessment in this year's report is primarily based on public sources and secondary information. Therefore, this year's assessment is limited in scope and mainly descriptive.
- ¹³⁵ In future annual reports on its activities under REMIT, the Agency will go into more detail concerning the operation and transparency of different categories of organised market places and ways of trading. For example, the Agency intends to further analyse - on the basis of data collected under REMIT, but also drawing on experiences from the NRAs, organised market places and other relevant stakeholders - the trends in market participants' trading behaviour and any concerns market participants may raise as regards to transparency and integrity of wholesale energy markets across the Union.
- ¹³⁶ In addition to the Agency's annual report on its activities under REMIT, the Agency publishes an annual report on the results of its monitoring of the Internal Electricity and Natural Gas Markets, prepared pursuant to Article 11 of the ACER Regulation (the "Market Monitoring Report"). The objective of the Market Monitoring Report is to assess how energy markets work and how they can perform more efficiently, thus making energy more affordable for the benefit of European energy consumers. Both annual reports will complement and refer to each other where useful.

3.5.2 Assessment of the operation of different categories of market places

3.5.2.1 Introduction

- ¹³⁷ Trading in wholesale energy products occurs either in organised market places (e.g. energy exchanges) or Over the Counter ("OTC"). OTC trading is either purely bilateral or carried out via a broker. Whilst transactions carried out at energy exchanges are anonymous and screen-traded, with brokers transactions can be handled via voice and screen.
- ¹³⁸ Most energy exchanges in Europe were established since the late 1990's. Their core products include day-ahead and intraday spot contracts (physical market), derivatives contracts such as futures, swaps and options (financial market) and OTC clearing in forward markets.
- ¹³⁹ Electricity and natural gas markets involve both physical and financial elements. The physical markets include the trading of and payment for the physical commodities, while the financial markets include the buying and selling of financial products derived from physical natural gas and electricity. Physical products are those whose contracts involve the physical delivery of natural gas or electricity. Physical market participants are those who are in the market to make or take delivery of the commodity. Financial products do not involve the delivery of gas or electricity; they only involve the exchange of money. Some of the energy exchanges within the EU operate both in the physical and financial markets, whilst other exchanges operate in only one of the two market segments.

140 The table below illustrates the main market segments in physical and financial wholesale energy markets.

■ Table 4: Market segments of wholesale energy markets

Market Segments	
Physical markets	Financial markets
Balancing markets	Derivatives markets
Spot markets	• Financial forwards
• Intraday or within-day products	• Futures
• Day-ahead products	• Swaps
• Week-end, weekly and brock products until the end of the ongoing month	• Options
Physical forward markets	

141 As regards balancing markets, there are a variety of national arrangements in place. There are regulatory regime differences across Member States, such as the differences in regulatory incentives to TSOs and/or market participants, cost allocation principles and variations in the treatment of intermittent resources. There is also a lack of harmonisation of market design such as methodologies for reserve and balancing pricing, imbalance settlement, procurement time horizons and nominations. Work is being done within the EU concerning the issue of how best to develop the so far disjointed, highly concentrated and diverse national balancing markets, into one robust integrated scheme accessible by all market participants, which seamlessly is joined to the other timeframes of the Internal Energy Market (IEM).

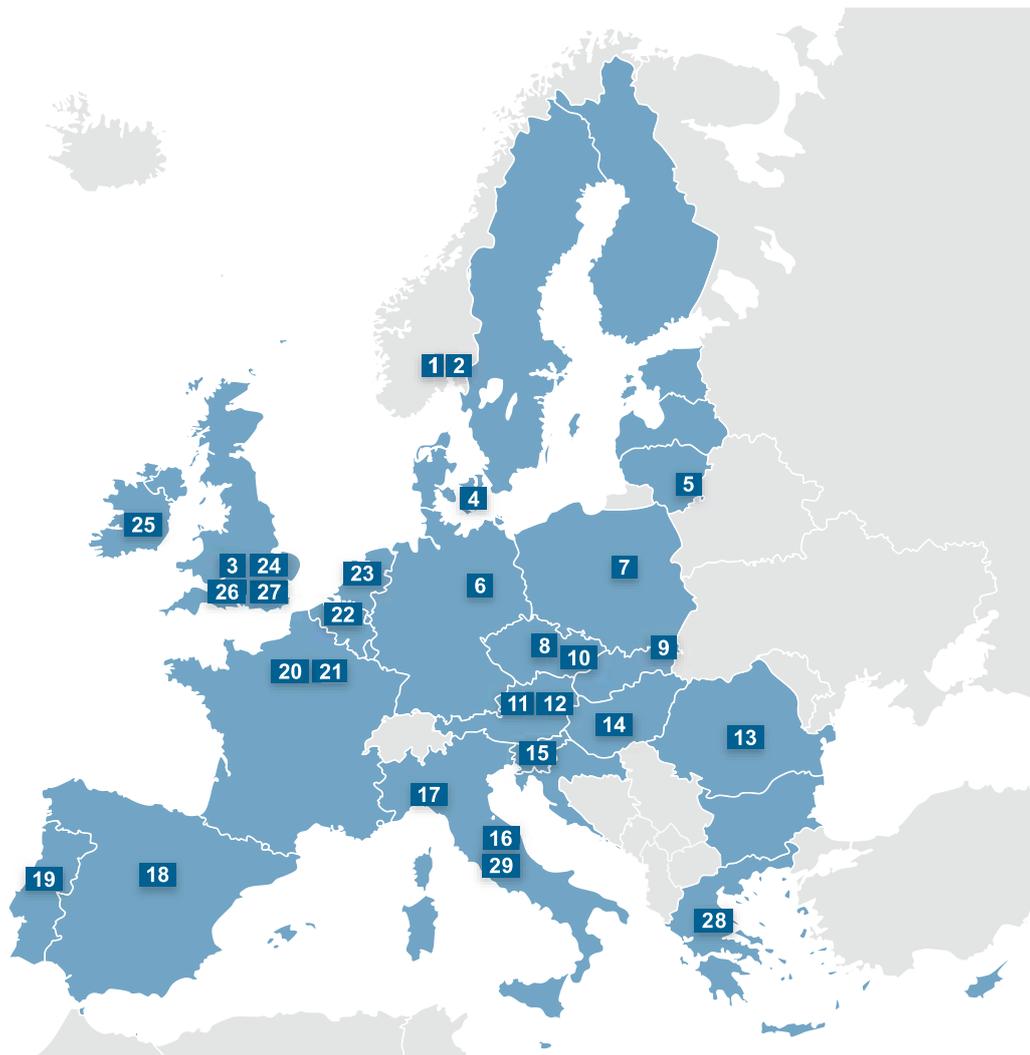
142 Overall, the number of market participants in the European wholesale energy market is expected to increase. Reasons for this include the fact that (i) greater transparency makes energy markets more understandable, comprehensible and reliable, which in turn encourages new entries from all types of market participant (producers, shippers and suppliers), and (ii) a higher degree of market integration between national and regional markets is likely to lead to an increase in market activity and larger number of trading participants compared to that of isolated markets. Consequently, increased overall trading and increased traded volumes is likely to open up for an increasing number of trading participants.

3.5.2.2 Wholesale electricity markets

Market structure and traded volumes

143 The following figure illustrates the major electricity exchanges operating within Europe during 2013.

■ Figure 16: Overview of major organised market places for electricity in Europe



Source: European energy exchange and the Agency

- | | | | |
|-----------|--|-----------|--|
| 1 | NASDAQ OMX Commodities | 15 | BSP Regional Energy Exchange (SouthPool) |
| 2 | Nord Pool Spot N2X | 16 | GME, Gestore dei mercati energetici S.p.a. |
| 3 | N2EX | 17 | Borsa italiana |
| 4 | Gaspoint Nordic | 18 | OMIE, Operador del Mercado Ibérico de Energía S.A. |
| 5 | BaltPool UAB | 19 | OMIP, Operador de Mercado Ibérico de Energía S.A. |
| 6 | EEX, European Energy Exchange | 20 | Powernext SA |
| 7 | POLPX | 21 | EPEX Spot SE |
| 8 | OTE a.s. | 22 | Belpex SA |
| 9 | OKTE, a.s. – Organizátor
krátkodobého trhu s elektrinou | 23 | APX NL |
| 10 | PXE, Power Exchange Central Europe | 24 | SEMO, Single Electricity Market Operator |
| 11 | EXAA, Energy Exchange Austria | 25 | ICE Endex |
| 12 | CEGH, Central European Gas Hub | 26 | ICE Futures Europe |
| 13 | OPCOM SA, Operato Pietei
de Energie Electricia | 27 | APX UK |
| 14 | HUPX, Hungarian Power Exchange | 28 | LAGIE, Electricity Market Operator S.A |
| | | 29 | IDEX, Italian Derivatives Energy Exchange |

144 The table below shows the traded spot volumes on a sample of European power exchanges in 2013, along with the volume change compared to the previous year. Nord Pool Spot's Nordic and Baltic market is by far the largest spot market in Europe. Nord Pool Spot has grown almost continuously for over a decade as more and more market participants have chosen to meet their short-term requirements at the spot exchange. EPEX Spot's German and Austrian market segment comes second in Europe in terms of spot volumes. Also EPEX Spot's market has grown steadily over the last decade. Italian GME has also increased its spot traded volume significantly compared to the year before.

■ Table 5: Spot traded volumes on power exchanges in Europe 2013

	Market place	Trading volumes 2013 (TWh)	Change 2012-2013 (%)
Nord Pool Spot	Nordic region plus Baltic markets of Estonia and Latvia	492	47%
EPEX Spot	Austria, France, Germany, Switzerland	346	8%
GME	Italy	271	52%
LAGIE	Greece	54	-2%
APX	United Kingdom, Netherlands	48	-4%
POLPX	Poland	19	0%
OTE	Czech Republic	13	8%
OKTE	Slovakia	6	-34%

Source: European energy exchanges

Traded products

145 Products traded in wholesale electricity markets include short- and long-term physical products and short- and long-term financial products. The contracts can either be standardised contracts, admitted to trading at organised market places, and/or non-standardised contracts traded OTC.

146 Physical products traded in wholesale energy markets range from hourly contracts traded in the intra-day market to long-term physical forwards. Derivatives are financial products with a value dependent on an underlying asset. There are several different kinds of derivative contracts. The most common ones are futures, options and swaps.

147 Spot and physical forward contracts are contracts for physical delivery over an agreed period. When a spot or forward contract is agreed, the parties to the trade make a mutual commitment to deliver and receive electricity at the price specified in the deal. Depending on the trading venue, financial settlement may be made daily during the period of delivery, or monthly, based on net transfers during the previous calendar month.

148 When trading OTC, it is common to use so-called standard master agreements that set out standard terms applicable to all the transactions made between the parties. Each time a transaction is entered into, the terms of the master agreement apply automatically. The master agreement permits the parties to quickly negotiate future transactions or agreements, because they can rely on the terms of the master agreement, so that the same terms need not be repetitively negotiated.

149 The figure below provides an overview of the different products offered at the various European power exchanges.

■ Figure 17: Overview of traded products at European power exchanges

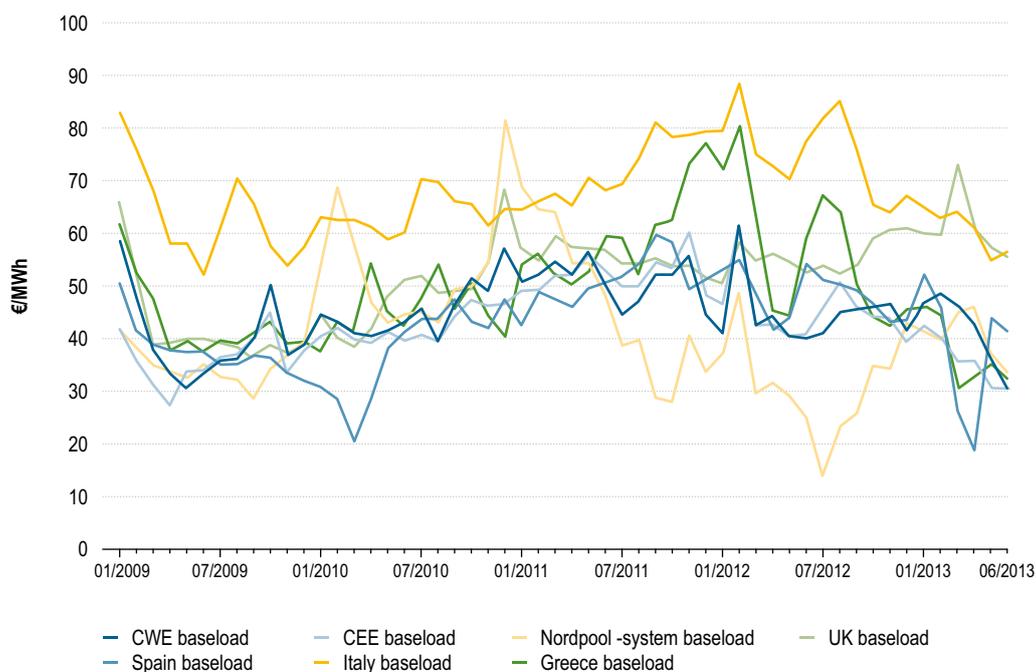
Power Exchange	Geographic market	Spot	Forward	Intraday	OTC clearing
NASDAQ OMX Commodities	Nordic Region, Germany, United Kingdom		•		•
Nord Pool Spot	Nordic region plus Baltic markets of Estonia and Latvia	•		•	
OMIE	Iberian market	•		•	
Belpex	Belgium	•		•	
APX UK	United Kingdom	•		•	•
APX NL	Netherlands	•		•	
EEX	Austria, France, Germany		•		•
EPEX Spot	Austria, France, Germany, Switzerland	•		•	•
ICE Endex	Belgium, Netherlands, United Kingdom		•		•
EXAA	Austria, Germany	•			
GME	Italy	•	•	•	•
ICE Futures Europe	United Kingdom		•		•
OMIP	Iberian market		•		•
SEMO	Ireland, Northern Ireland	•		•	
IDEX	Italy		•		•
Nord Pool Spot N2EX	United Kingdom	•		•	•
POLPX	Poland	•	•	•	•
OTE	Czech Republic	•		•	
OKTE	Slovakia	•			
OPCOM	Romania	•			
Power Exchange Central Europe (PXE)	Czech Republic, Slovakia, Hungary		•		•
BSP Regional Energy Exchange (SouthPool)	Slovenia	•		•	•
Belpex	Belgium	•		•	
Borsa Italia	Italy	•	•		
Balt Pool	Lithuania	•	•		
LAGIE	Greece	•			
HUPX	Hungary	•	•		•

Source: Europex

Prices

150 The figure below illustrates the development of monthly average electricity spot prices from 2010 to the second quarter of 2013.

■ Figure 18: Comparison of monthly electricity baseload prices in regional electricity markets



Source: DG Energy, Quarterly Report, Volume 6, 2013.

151 Although there has been a perceivable price convergence among different regions across Europe in recent years, there were some exceptional periods when prices diverged quite significantly.

152 The overall trend for the first half of 2013 is decreasing power prices with two exceptions: Italy and the United Kingdom, mainly due to the dependence of natural gas in these two markets. The need for imports in both Italy and the United Kingdom is in general higher than in other European markets, which also tends to drive domestic wholesale energy prices.

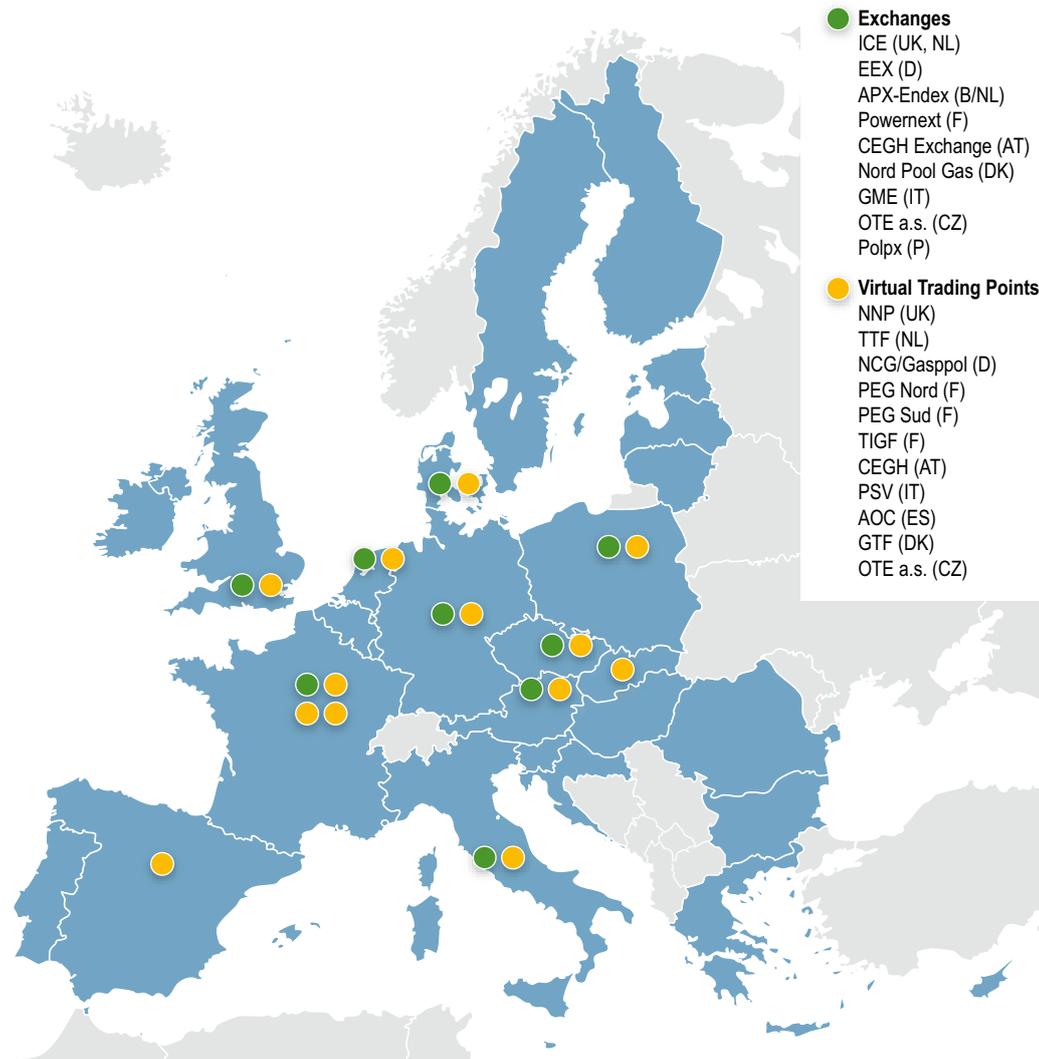
153 Prices in the Nordic market fluctuated in wide ranges during the entire depicted period, primarily due to the decisive role of hydro-based power generation in this region. In the Central Western Europe (CWE) region, renewable power generation in Germany and nuclear availability in France were important factors in determining power prices. In the Iberian power mix, hydro availability plays an important role, which explains the price decrease in Spain during the first part of 2013. Nevertheless, during the last couple of years wind and solar based generation significantly impacted power prices in the region, partly replacing gas-fired generation. Power prices in Central and Eastern Europe were impacted by the CWE market and other factors, such as hydro supply in the Balkans.

3.5.2.3 Wholesale natural gas markets

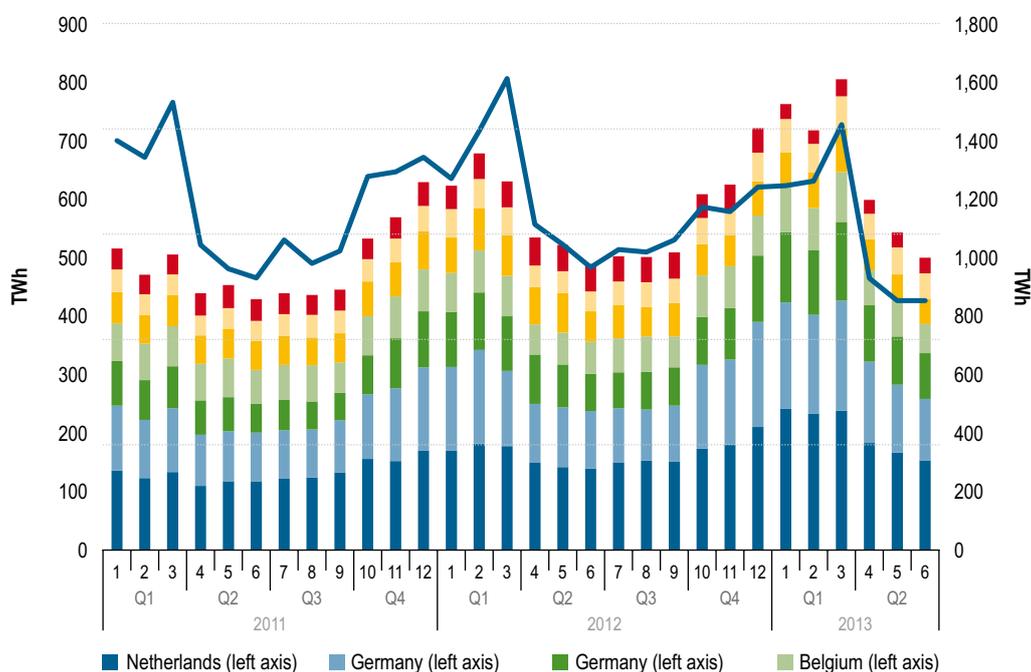
Market structure and traded volumes

¹⁵⁴ Even more than European electricity markets, European gas markets are dominated by OTC trading followed by exchange futures. The following figure illustrates the major gas trading points in 2013.

■ Figure 19: Major gas trading points in Europe



155 The development of traded volumes on European gas hubs is displayed in the figure below.



■ Figure 20: Traded volumes on European gas hubs

Source: DG Energy, Quarterly Report on European Gas markets, Volume 6, 2013.

156 During the first half of 2013, 10 530 TWh of gas were traded on hubs across Europe. The NBP hub in the UK is the largest hub in Europe with traded volumes at 6 600 TWh. This is a decrease of 11 % relative to the first half of 2012. For the three continental hubs, TTF in the Netherlands and Gaspool and NCG in Germany, a comparison between 2012 and 2013 show an increase of 27%, 23% and 22% respectively.

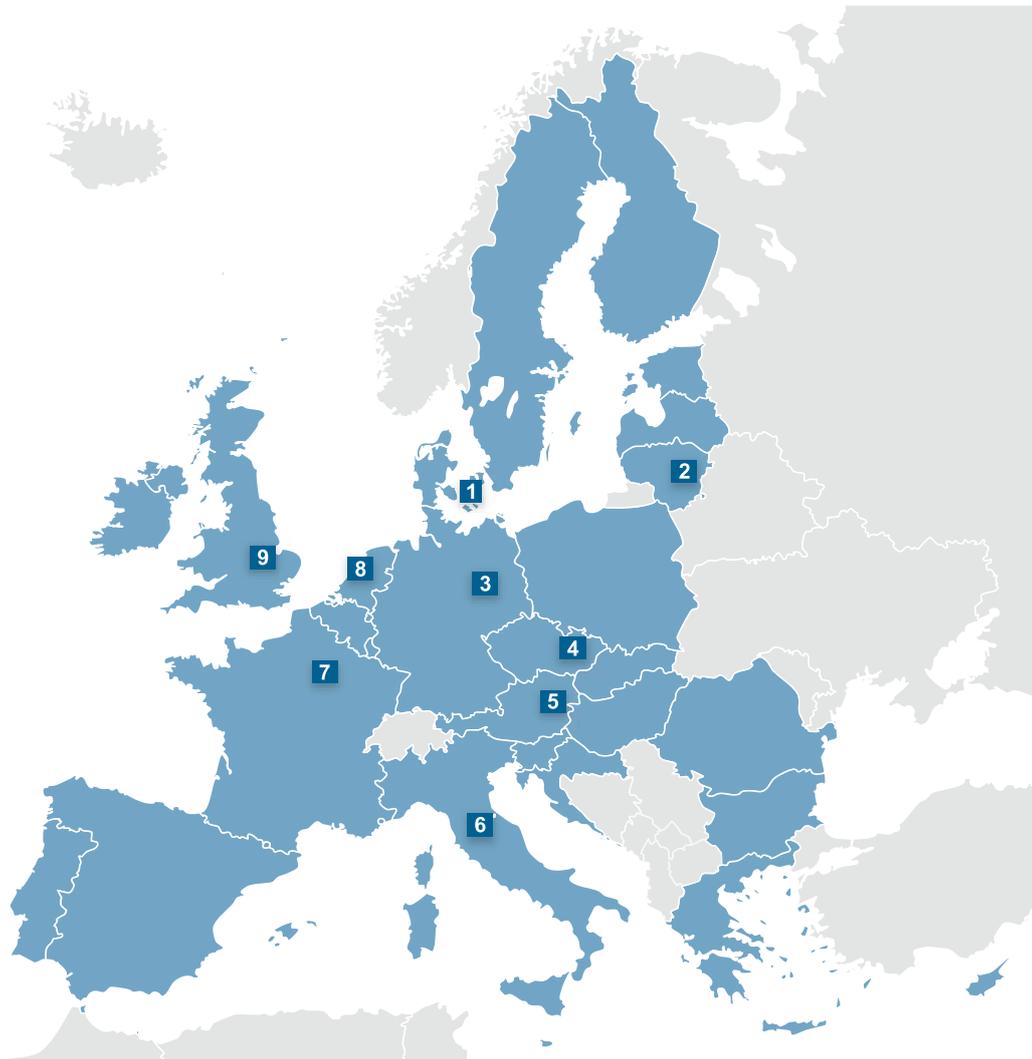
157 The Polish gas hub was launched in December 2012 by the Polish Power Exchange, PolPX. The traded volume for the first quarter of 2013 reached 156 MWh.

158 The Hungarian gas hub was launched in January 2013. Until June 2013, only national companies were allowed to trade, but with a regulatory change in June, three foreign companies were licensed. However, the licence does not permit exchange trading; it is limited to OTC trading.

159 Nine exchange operators provide gas trading facilities in the EU. Three among them (ICE Futures Europe based in London, APX-Endex based in Amsterdam, EEX based in Leipzig) offer gas trades for delivery in more than one national market. The other five exchanges offer trading for each single market. Almost all exchanges are not only restricted to gas trades, as they are active in other commodity markets, especially in the electricity market.¹⁹ The gas trading points and the exchanges are displayed in the following figure.

19 Prospec Research

■ Figure 21: Overview of major organised market places for natural gas in Europe



Source: European energy exchanges and the Agency

- | | |
|--|---|
| 1 Gaspoint Nordic | 6 GME, Gestore dei mercati energetici S.p.a. |
| 2 BaltPool UAB | 7 Powernext SA |
| 3 EEX, European Energy Exchange | 8 APX |
| 4 OTE, Operátor trhu s elektrinou a.s | 9 ICE Futures Europe |
| 5 CEGH, Central European Gas Hub | |

Traded products

- 160 In general, three major types of traded products for natural gas can be distinguished in the Union: (i) long-term contracts, (ii) spot and physical forward contracts and (iii) derivatives contracts.
- 161 Long-term contracts are used to import the majority of gas from Russia, Algeria and Norway. These contracts are usually drawn up for long periods of time (e.g. 20 or 30 years). This type of contract allows the buyer to secure his supplies and allows the producer to have definite customers in place over a long period, assisting in investment in exploration, production and transmission activities, costs that are paid off over the long term. Long-term contracts may include clauses such as "Take or Pay", which imposes a volume risk on the buyer, who has committed to pay for a minimum quantity as specified in the contract, whether the gas is taken or not. For his part, the producer undertakes to supply gas volumes according to the cut-off periods and other terms and conditions stipulated in the contract.
- 162 Spot and physical forward contracts are contracts for physical delivery over an agreed period, usually for a "flat" or "baseload" quantity. When a spot, prompt or forward contract is agreed, the parties to the trade make a mutual commitment to deliver and receive gas at the price specified in the deal. Transfer of the gas is usually done by daily nominations for title transfer to the relevant trading hub. Depending on the trading venue, financial settlement may be made daily during the period of gas delivery, or monthly, based on net transfers during the previous calendar month.
- 163 Derivatives are financial products whose value is dependent on an underlying asset. There are several different kinds of derivatives contracts. The most common ones are futures, options and swaps.
- 164 Purely financial OTC transactions are normally offered at a fixed price for an agreed quantity of gas to be notionally delivered over some future period, priced against a published day-ahead gas price, and settled at the end of the notional delivery period with a cash payment equal to the difference between the average of the daily gas price during the period and the fixed price originally agreed on.
- 165 Trading in OTC markets is usually based on standard master agreements defining all the aspects that are common to every deal: procedures for gas delivery, remedies in case of under-delivery, over-delivery or default by either party, processes to be followed for deal confirmation, billing, payment, and so on. With this agreement in place, the traders can focus on negotiating the price and trades can be concluded rapidly. Standard master agreements include NBP 1997, "short-term flat NBP trading terms and conditions", ZBT 2004, "Zeebrugge hub natural gas trading terms and conditions", European Federation of Energy Traders (EFET) Gas Master Agreement and ISDA Master Agreement.

166 The table below provides an overview of the different products offered at the various European gas hubs.

Table 6: Overview of traded products at European gas hubs

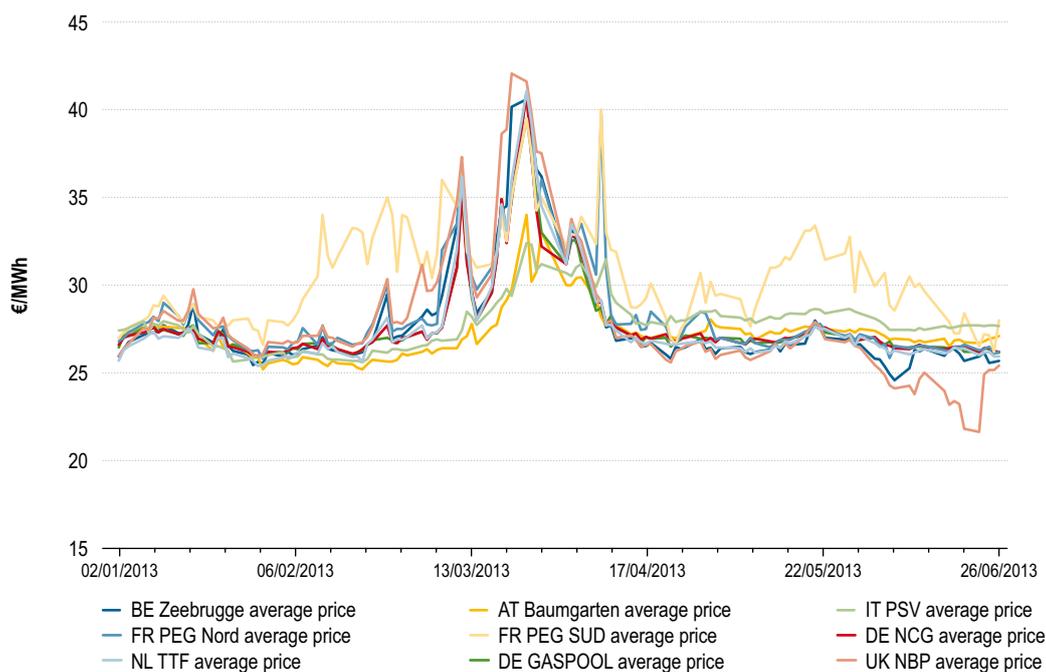
Gas Hubs	Geographic market	Spot	Futures	Intraday	OTC clearing	Options
ICE Futures Europe	United Kingdom, Netherlands, Germany		•		•	•
APX-Endex	United Kingdom, Zeebrugge, Netherlands	•	•	•	•	
EEX	Germany, Netherlands	•	•	•		•
Powernext	France	•	•	•	•	
CEGH Exchange	Austria	•	•			
Nord Pool Gas	Denmark	•	•			
GME	Italy	•		•		
OTE	Czech Republic	•		•		

Source: Prospex Research and European energy exchanges

Prices

167 There was a convergence of day-ahead prices of natural gas traded at European hubs for the last quarter of 2012 and the beginning of 2013 with an average price difference between the highest and the lowest hub price of 1-2 Euro/MWh. Prices moved together all over Europe for the remaining part of the first half of 2013, with the exception of a period of sudden colder temperatures in March, which created a divergence of up to 6 Euro/MWh.

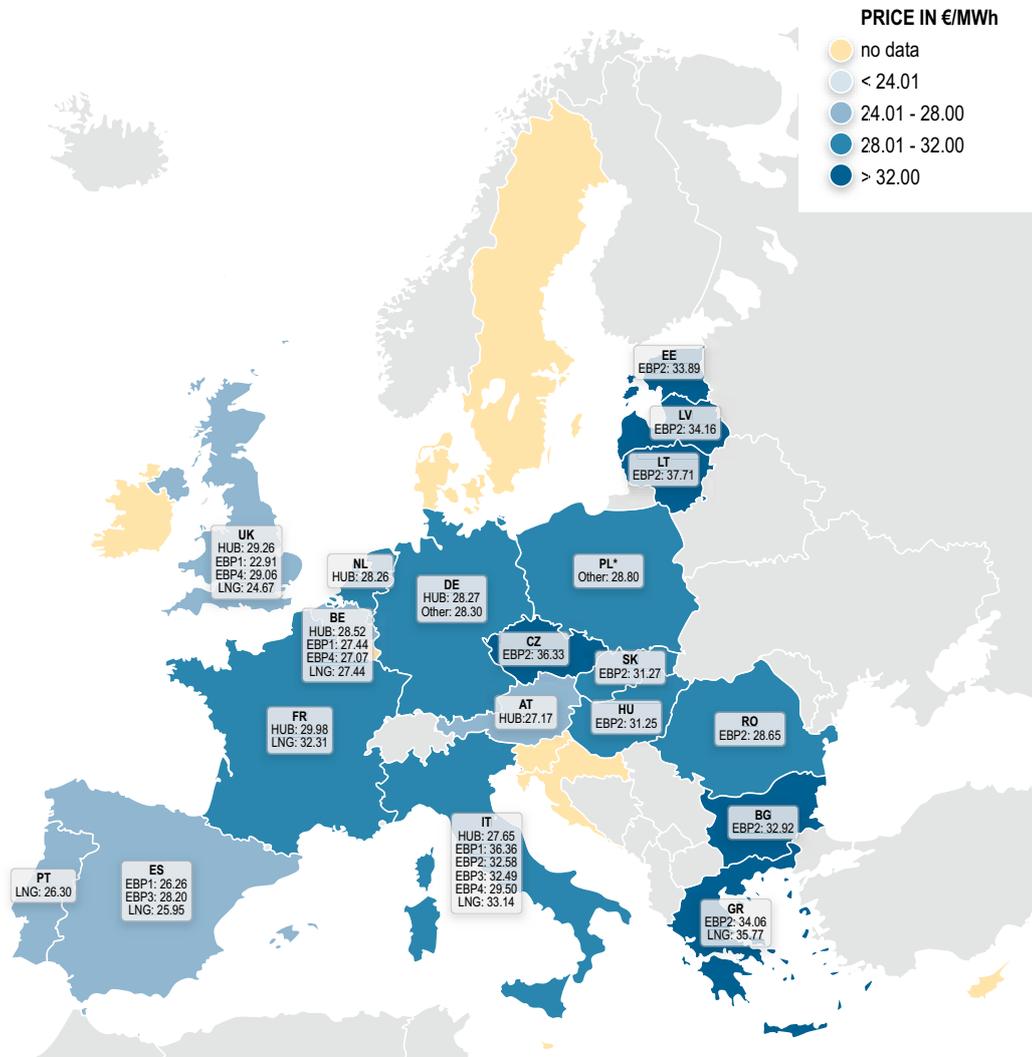
Figure 22: Wholesale day-ahead gas prices of European gas hubs



Source: DG Energy, Quarterly Report on European Gas markets, Volume 6, 2013

168 The figure below illustrates the estimated border prices for wholesale European gas prices for July 2013.

■ Figure 23: Comparison of EU wholesale gas prices



EBP: EBP prices are estimated border prices (domestic prices not taken into account).
 EBP1 prices are estimations of border prices for gas from Norway.
 EBP2 prices are estimations of border prices for gas from Russia.
 EBP3 prices are estimations of border prices for gas from Algeria.
 EBP4 prices are estimations of border prices for gas from the Netherlands.

The colour code for each MS is defined according to a simple average of all available types of prices (HUB, EBP, LNG) in that MS.

*Regulated prices for natural gas in Poland, net of transmission charges, as of 16.03.2012; Recipients of high natural gas (consumer group E).

Source: DG Energy, Quarterly Report on European Gas markets, Volume 6, 2013

3.5.3 Assessment of the transparency of different categories of market places

3.5.3.1 Introduction

- ¹⁶⁹ Transparency is a prerequisite for a well-functioning, competitive and efficient market. It engenders trust, lowers barriers to entry and attracts new entrants – all of which helps to generate liquidity.
- ¹⁷⁰ The key rationale for transparency is to provide market participants with access to information about current trading opportunities and to facilitate price formation. It is also intended to address the potential adverse effect of fragmentation of markets and liquidity by providing information that enables users to compare trading opportunities and results across trading venues. Transparency is crucial for market participants to be able to identify an accurate market price and to make rational trading decisions about when and where to trade.
- ¹⁷¹ In January 2007, the European Commission published the final report on the sector inquiry carried out by DG Competition into the gas and electricity markets in the EU. In its final report, the Commission identified shortcomings concerning the lack of transparency in energy markets calling for urgent action²⁰.
- ¹⁷² The Third Energy Liberalisation Package established a new institutional framework for the gas and electricity sectors, ensuring non-discriminatory access to networks, and establishing new European bodies to plan and oversee the development of transmission systems. During the preparatory phase for this legislation, the Commission recognised potential gaps and inconsistencies in the regulatory oversight framework governing wholesale energy markets. There have been claims that price increases on energy markets have not reflected fundamentals. However, without a clear oversight regime it is difficult to assess whether such claims are well-founded.
- ¹⁷³ The Third Energy Liberalisation Package implemented a broad range of disclosure obligations for fundamental data codified in the package. However, the Third Energy Liberalisation Package only addresses traded markets to a limited extent. Supply undertakings are required to keep records on all trading transactions for five years. These can be accessed by competent authorities. However, the definition of supply undertakings is quite limited and MiFID-regulated entities are specifically not covered by this provision.
- ¹⁷⁴ In its first edition of the non-binding ACER Guidance on the application of REMIT, the Agency considered that inside information relating to wholesale energy products should be disclosed in such a manner that the information is capable of being disseminated as widely as possible. In its third edition of ACER Guidance, the Agency further elaborated its views concerning effective disclosure of inside information in accordance with Article 4(1) of REMIT. The Agency maintained its view that the disclosure of inside information through platforms is the most effective way. If platforms for the disclosure of inside information exist, for instance operated by TSOs or energy exchanges, market participants with inside information to disclose should use such disclosure mechanisms, if not otherwise specified in relevant rules and regulations, or by the competent NRA. If adequate transparency platforms do not yet exist or simultaneously to a publication through a platform for the disclosure of inside information, market participants may be allowed, at least for an interim period and unless otherwise specified, to publish inside information, which they possess on their own website. However, where such a disclosure mechanism is chosen, it is important that disclosure of inside information enhances the level of transparency across the EU and does not distort the dissemination of information. Information shall therefore be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, including the media. Inside information shall be disclosed by a market participant free-of-charge, in a non-discriminatory, user-friendly and quantifiable manner. An RSS feed specific for the disclosure of inside information shall be provided, allowing easy and fast access by the public. The information should be published in the official language(s) of the relevant Member State and in English or in English only.

²⁰ Commission Communication COM(2006)851.

3.5.3.2 Wholesale electricity markets

- ¹⁷⁵ The Third Energy Package introduced transparency rules through Regulation (EC) No 714/2009 and applicable guidelines and network codes on the management and allocation of available transfer capacity of interconnections between national systems. This regulation sets out requirements for TSOs to publish data on the availability of networks, capacities of cross-border interconnectors and generation, load and network outages.
- ¹⁷⁶ The Commission found that although those rules provided for an enhanced framework for improved data disclosure, their level of detail and ensuing divergences in national applications had left traders with differing sets of market data across the EU. Furthermore, the lack of harmonisation in type and format of the published information made it impossible for market participants to develop a coherent and accurate view of electricity market fundamentals.²¹
- ¹⁷⁷ In order to remedy the situation, the Commission, through input from ERGEG, adopted Regulation (EU) No 543/2013 on submission and publication of data in electricity markets and amended Annex 1 to regulation (EC) No. 714/2009 in June 2013. The main novelty introduced by the Regulation is the establishment of a central information transparency platform to be operated by ENTSO-E. The platform will collect TSO's fundamental data related to generation, load, transmission and electricity balancing. It will be compulsory for TSOs to submit data to ENTSO-E. The new platform should be operational 18 months after entry into force of the Regulation.
- ¹⁷⁸ REMIT recognises that publication of inside information in accordance with Regulation (EC) No 714/2009, or guidelines adopted pursuant to it, constitute simultaneous, complete and effective public disclosure, but not necessarily timely public disclosure.
- ¹⁷⁹ In order to enable market participants to fulfil the obligation to publish inside information as stated in Article 4 of REMIT, organised market places are encouraged to make inside information platforms available for the disclosure of inside information. At present, there are six platform solutions available for the disclosure of inside information for electricity in Member States.

Box 6: Overview of current platforms for disclosure of inside information at organised market places in Europe for wholesale electricity markets

Nord Pool Spot - NPS uses the UMM System as a specialist tool for members to fulfil the requirements of disclosing inside information. The UMM System has been used for several years to assure that members are able to disclose inside information in accordance with the NPS Market Conduct Rules and with REMIT. All UMMs are publicly shown on the NPS website. In 2013, the UMM System was reviewed and updated, partly as a result of REMIT. NPS has streamlined the requirements and operability of the new system in order to incorporate functionalities allowing the fulfilment of the obligations in their own Market Conduct Rules as well as the REMIT obligations. The information required for an event disclosed through an UMM is where and when the event occurred, what unit it concerns, the reason and the consequence of the event, the start and end of the event and information about uncertainties. The UMMs are categorised as i) outage or limitation, ii) expansion or dismantling and iii) market information.²²

EEX - EEX has since 2009 published transparency data on its web based platform "Transparency in Energy Markets". The platform was established jointly by four German TSOs. In 2010, also the Austrian TSO, Austrian Power Grid AG, joined the platform and by 2011 they began submitting data to the platform. The generation and consumption data intended for publication is divided into two categories: i) statutory publication requirements of the transmission system operator and ii) voluntary commitment of the market participants. The web page graphically presents, among other things, real time data on actual and planned production and planned and unscheduled non-usability of generation. Information on reporting issues relevant to the platform is submitted by technical status reports. These are divided into "Incidents",

²¹ DG ENER Public Consultation Document – Guidelines on Fundamental Electricity Data Transparency

²² www.nordpoolspot.com

which are unplanned events that cause flawed or delayed reporting data, and “maintenance windows”, which are scheduled activities that temporarily cause incomplete reporting data.²³

RTE - On 26 January 2012, UFE (Union Française de l'Électricité) and RTE (Réseau de transport d'électricité) announced that they will publish additional information on French electricity generation as part of their continuing efforts to promote greater transparency in the French electricity market.²⁴ RTE and the generators of UFE have now created a new page on the RTE Customer Portal, for publishing additional information designed to give market players an even clearer picture of the country's supply of electricity. RTE and UFE had previously taken an important step forward in the provision of French electricity generation data, by giving market players actual generation figures for units over 100 MW within the hour, along with day-ahead forecasts for generation by the UFE fleet. That initiative was being enhanced with the addition of a new page on the customer portal of the RTE website. The page contains information additional to that already issued, notably on forecast availability and unplanned outages affecting the generating fleet. This information, placed online in the form of continuous declarations by the generators, may cover such items as partial unplanned unavailability, or changes to the resumption of service dates for currently unavailable generating units, and more.

HUPX (Hungarian Power Exchange) - In 2013, HUPX, as authorised operator of the regulated electricity market, was appointed by the Hungarian Ministry of National Development decree as the operator of the inside information website. The Hungarian Energy and Public Utility Regulatory Authority accepted the Publication Rules of the Inside Information website. The development of the inside information website was conducted during the second half of 2013. The website allows market participants to efficiently disclose inside information simultaneously in Hungarian and in English. The basic data required in an inside information message covers market participant, company, short summary of the event, affected facility and assets, affected market, affected operational area, available capacity in case of outage, event start, stop and duration, date and time of information received as well as date and time of publication.²⁵

POLPX (Polish Power Exchange) - The Exchange Information Platform (GPI) has recently been established by the Polish Power Exchange as a result of the initiative of the Energy Regulatory Office (ERO) to construct a single, commonly accessible information platform for the Polish energy market. The GPI is a result of the cooperation between representatives of the entire electricity sector under the aegis of ERO. The development of the platform had been continuously consulted with the GPI Working Group composed of six regional entities. The GPI platform is divided into three sections: i) the UMM section, which enables publication of inside information regarding outages, ii) section on data on electricity system, which contains data on planned and current capacity demand and scale of generation requirement (daily, short- and long-term plans are published as well as cross-border exchange), and iii) the Polish Power Exchange Markets section shows price indices and turnover volumes at the exchange.²⁶

REN - The REN transparency platform is based on a UMM system similar to the NPS system. It lists on the initial webpage the date of publication of the message, the event type, the relevant market participant and a summary of the event description. Details of the published inside information provides name of the market participant, event type, start, end or estimated end date, publishing date, the actual message, and if applicable, value of the energy associated with the event and related messages.²⁷

23 <http://www.transparency.eex.com/en/>

24 <http://www.rte-france.com/en/news-cases/news/transparency-in-the-french-electricity-market-ufe-and-rte-publish-additional-information-on-french-electricity-generation-1>

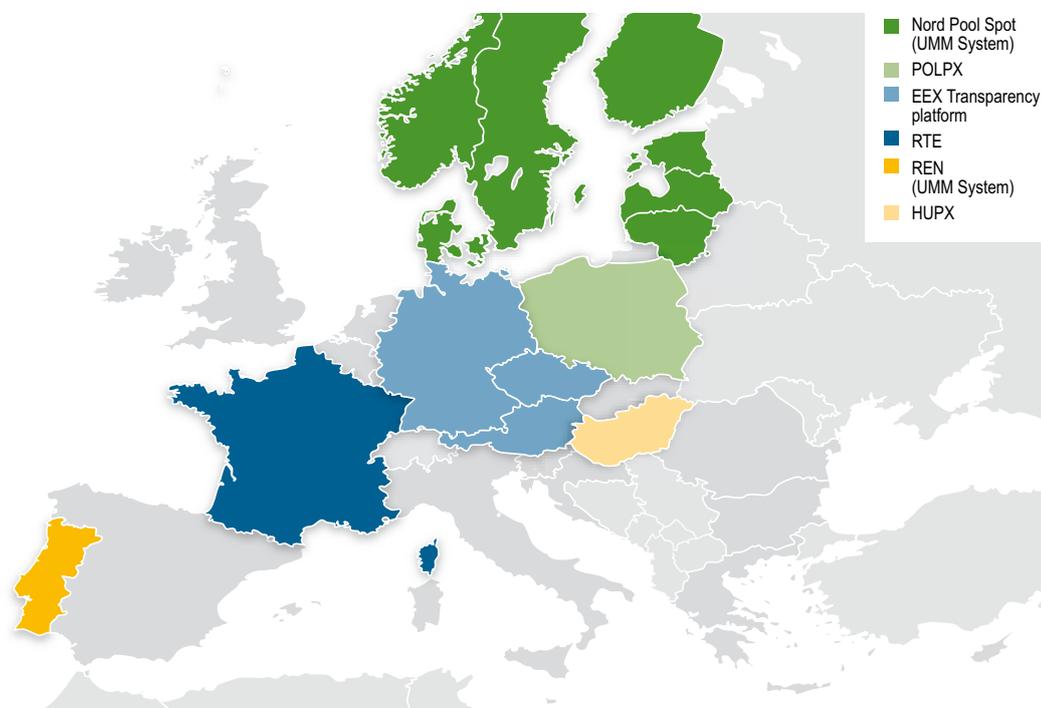
25 <https://www.insideinformation.hu/en/pubpages/newslistmain.aspx>

26 <http://gpi.tge.pl/en>

27 <http://www.mercado.ren.pt/EN/Electr/Pages/default.aspx>

180 The following figure illustrates the platforms for disclosure of inside information for electricity that were in operation in 2013.

■ Figure 24: Platforms for the disclosure of inside information in electricity markets in 2013



181 In Member States where platforms do not exist, market participants normally publish their inside information on their company website or in an aggregated way through TSO transparency platforms. In some markets, news service providers such as Platts, Reuters, Montel etc., have established services, which further disseminate the inside information that market participants have disclosed on their websites. These services contribute to an effective disclosure of inside information and enhance transparency in the markets. The Agency engaged in discussions with the major news providers in 2013 concerning their role in the dissemination of inside information in wholesale energy markets.

182 The improvement of transparency and the effective disclosure of inside information will remain a key priority for the Agency in 2014 and beyond. In this context, the Agency considers to make public a list of inside information platforms across the EU on its website.

3.5.3.3 Wholesale gas markets

183 The transparency rules introduced by the Third Energy Package presented above also apply to TSOs as regards the services they offer and the relevant conditions applied, technical information necessary for network access, tariffs, capacity, supply and demand information and balancing. Similar obligations apply for Storage System Operators (SSOs) and Local System Operator (LSOs).

184 Therefore, over time, TSOs, SSOs and LSOs have developed transparency platforms at national or regional level for the publication of fundamental data. ENTSOG manages a transparency platform that is based on information that is already published by individual TSOs. The transparency platform has been designed to facilitate access to transmission networks by, among other things, making all the information available in an organised and structured way on a single website.

185 From 1 October 2013, ENTSOG members are obliged to publish transparency data as well as data about capacity requests on ENTSOG's transparency platform, in addition to the publication on their

individual website.²⁸ This is a result of the Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) 715/2009.

¹⁸⁶ In order to enable market participants to fulfil the obligation to publish inside information as stated in Article 4 of REMIT, organised market places are encouraged to make inside information platforms available for the disclosure of inside information. At present, there are three platforms available for the disclosure of inside information for gas in Member States.

Box 7: Overview of current platforms for disclosure of inside information at organised market places in Europe for wholesale gas markets

Energinet.dk - Energinet.dk has made available a website for gas market messages in order to ensure increased transparency on the gas market in line with the obligations in REMIT. All messages are publicly shown both on Energinet.dk's own website and on the new website gasmessages.dk. The messages are comparable to the UMMs at NPS, but in this case, reporting concerns information relevant to the capacity and use of facilities for production, storage, consumption or transmission of natural gas. Aside from these so called REMIT messages, market participants can also disclose and receive information of mere commercial relevance on this website, such as information on mergers and acquisitions.²⁹

National Grid - National Grid has recently launched a central platform for GB REMIT Insider Trading Notifications on behalf of the GB Gas Industry. The web page publishes all notifications as well as a list of market participants that provide the site with information. The site also provides visitors with links to market participants' own external websites that provide inside information notifications. Market participants can choose to add notifications to the platform either manually via a secure provider account set up by National Grid, or through Twitter.³⁰

CEGH (Central European Gas Hub) - CEGH has developed a new web-based platform for the publication of inside information for market participants in Central and Eastern Europe. CEGH states that the platform is under continuous adaptation to add new functionalities to respond to market needs. The platform is, for the time being, only used for reporting inside information according to Article 4 of REMIT and not fundamental data.³¹

²⁸ See http://www.entsog.eu/public/uploads/files/publications/AWP%20&%20Annual%20Report/2013/ENTSOG_130430_AnnualReport2012_Webversion_FINAL_lowres.pdf

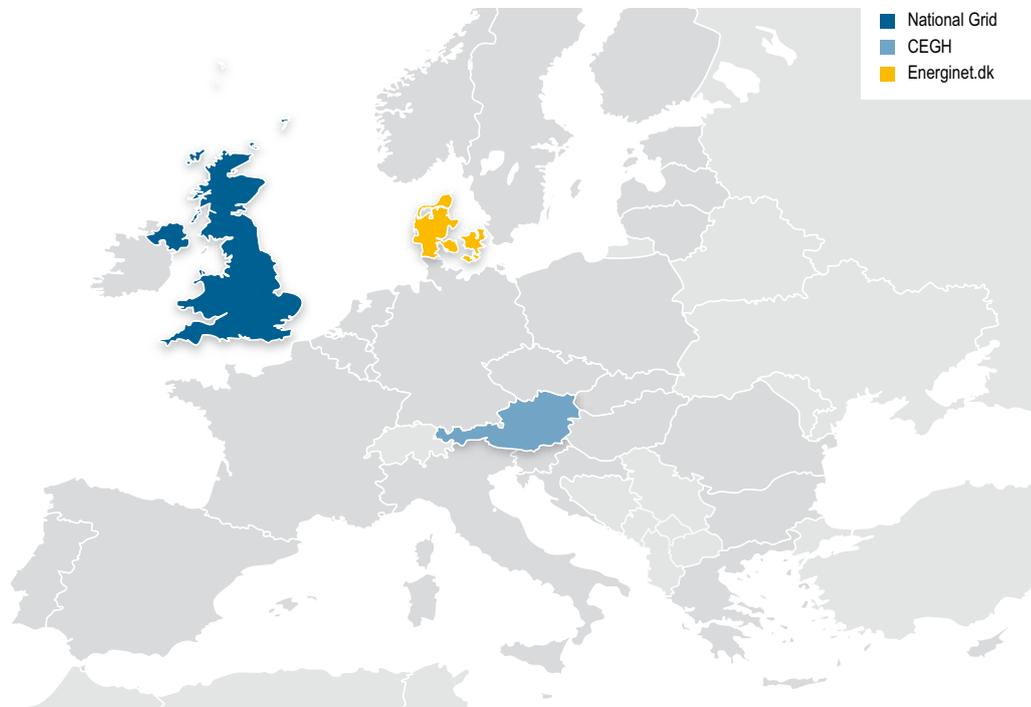
²⁹ <https://gasmessages.dk/Pages/default.aspx>

³⁰ <http://www.nationalgrid.com/uk/Gas/OperationalInfo/remit/>

³¹ <https://www.gashub.at/remit/content/details.xhtml?id=37722-1-2013>

187 The following figure illustrates platforms for the disclosure of inside information for natural gas that were in operation in 2013.

■ Figure 25: Platforms for disclosure of inside information in natural gas markets in 2013



188 As for the electricity market, in Member States where platforms do not exist, market participants normally publish their inside information on their company website or in an aggregated way through TSO transparency platforms.

3.6 Stakeholder involvement

3.6.1 Public workshops

¹⁸⁹ The Agency organised seven public workshops between the adoption of REMIT and the end of 2013, of which the following three took place during 2013.

■ Figure 26: Public workshops organised in 2013

Date	Location	Main topics
25 April	Ljubljana	RRM and RIS Guidelines Technical Standards for trade reporting
11 July	Ljubljana	Third edition of ACER Guidance Data collection
7 November	Ljubljana	First REMIT Annual Report Registration of market participants Data collection

¹⁹⁰ On average, around 100 stakeholders participated in the workshops.

¹⁹¹ The Agency furthermore communicated with the public on all REMIT matters, including through the participation of ACER representatives as speakers in regional workshops organised by the NRAs for instance in Copenhagen, Florence, Frankfurt and London, to raise awareness among market participants of REMIT and its obligations and prohibitions applying to market participants in 2013.

3.6.2 Roundtable meetings

¹⁹² In connection with the implementation of Regulation (EU) No 1227/2011 (REMIT), the Agency started to organise roundtable meetings with interested stakeholders on REMIT implementation in Ljubljana as of September 2013. The purpose of the roundtable meetings was to collect the views of, and obtain information from, key stakeholders on questions related to the implementation of REMIT with focus on data collection.

¹⁹³ The Agency organised three roundtable meetings with stakeholders on REMIT implementation. The meetings were held on 23 and 24 September in Ljubljana.

¹⁹⁴ Three stakeholder groups were invited to discuss questions on data collection:

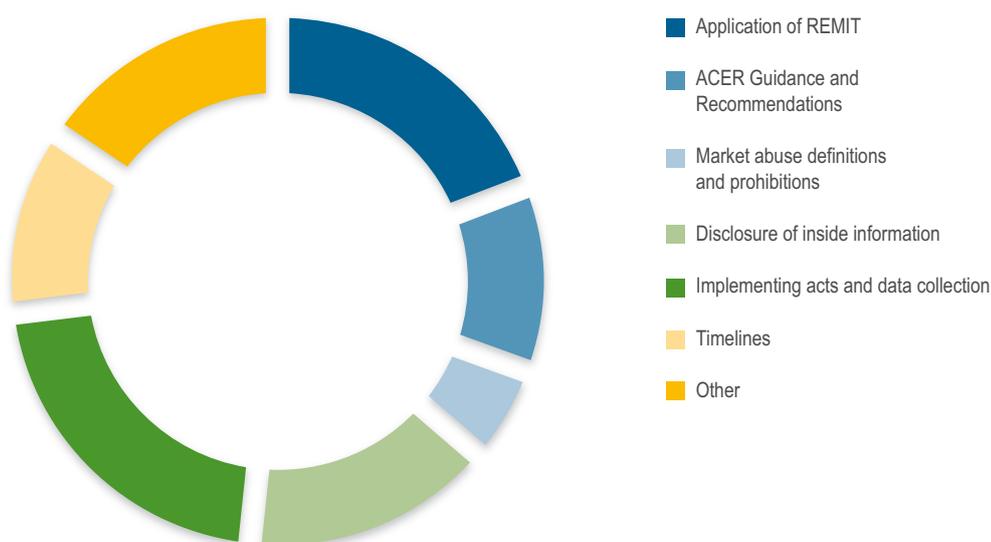
- third party reporting entities,
- organised market places,
- associations of market participants.

¹⁹⁵ The roundtable meetings focused on three main topics: i) the current status of data collection under REMIT, ii) the Agency's REMIT implementation Pilot Project and iii) questions and open discussion with participants on the implementation process. The discussions were based on ACER's recommendations to the Commission on the records of transactions and on ACER's public consultation on the technical standards for data collection.

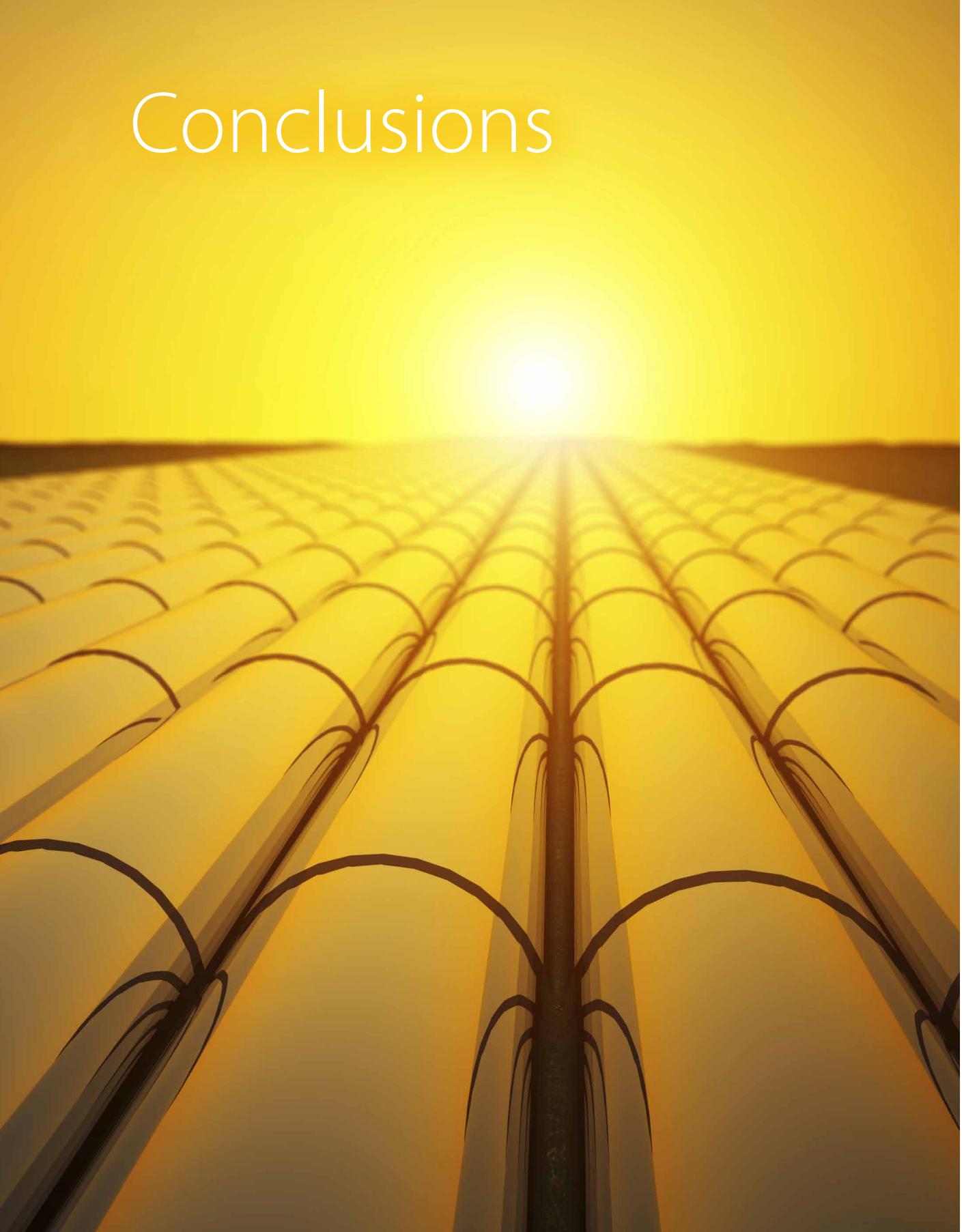
3.6.3 Q&As

- ¹⁹⁶ The Agency published for the first time a Q&A paper on REMIT in 2012. This paper was updated in 2013. The basis of the paper is the numerous questions on REMIT addressed by market participants through the Agency's REMIT mailbox. The Q&A paper is aiming at informing market participants and the wider public on REMIT and its implications. The Q&A paper is divided into four sections: i) background information on REMIT, ii) the role of the Agency, iii) REMIT definitions, obligations and prohibitions for market participants and iv) the timeline for implementation. The Agency also provided a form on its website through which market participants and other stakeholders can submit requests for clarification on issues related to the implementation of REMIT. The relevant clarifications are provided in the Q&A document.
- ¹⁹⁷ REMIT related questions shall be sent to the Agency's following functional mailbox: REMIT@acer.europa.eu. The input received is used for the Agency's Q&A paper as well as for the updates of the ACER Guidance on the application of REMIT.
- ¹⁹⁸ In 2013, the Agency received approximately 52 questions through functional mailbox. Figure 27 indicates the topics of the REMIT questions.

■ Figure 27: Topics of REMIT questions raised by stakeholder during 2013



Conclusions



4 Conclusions and recommendations

4.1 Conclusions

¹⁹⁹ The Agency has achieved major REMIT implementation milestones in 2013 and will continue its REMIT implementation activities in 2014. It will further enhance its market monitoring and co-ordination activities in 2014. Both depends on the adoption of the Commission's implementing acts. Efficient and effective market monitoring will, however, require will depend heavily on the appropriate financial and human resources being made available to the Agency.

4.2 Recommendations

²⁰⁰ According to Article 7(3), first subparagraph, of REMIT, the Agency may make recommendations to the Commission as regards market rules, standards and procedures which could improve market integrity and the functioning of the internal market. The Agency may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Since the year 2013 was fully dedicated to REMIT implementation and in view of its limited resources, the Agency refrains from formulating recommendations in 2014.

4.3 Outlook and way forward

²⁰¹ The implementation of REMIT is still ongoing and will continue in 2014 and beyond. The ACER work programme foresees the following deliverables for 2014 in the area of REMIT implementation:

- Establishment and administration of a European register of market participants,
- Further development and maintenance of IT solutions for market surveillance, data collection, and data sharing of wholesale energy markets,
- Preparation of the collection of trade, fundamental and other data, in connection with the REMIT implementing acts, as well as market surveillance activities,
- Preparation of systems and procedures for the sharing of data with NRAs and other authorities and dissemination of information on the basis of transparent rules for such dissemination,
- Ensuring operational reliability and professional secrecy concerning the information received by the Agency, by taking all necessary measures to prevent misuse of, and unauthorised access to, the information received and maintained in the Agency's systems, by identifying sources of operational risk and by minimising them through the development of appropriate systems, controls and procedures,
- Coordination of market monitoring activities of NRAs, including at regional level, without prejudice to their responsibilities, aiming to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way, including guidance to NRAs and coordination of NRAs' investigation activities on cross-border market abuse instances, including the promotion of best practices,
- Cooperation with ESMA, competent national financial market authorities and other authorities and with supervisory authorities, international organisations and the administrations of third countries,

- Support to the Commission on the implementing acts and potential reviews of REMIT, in particular according to Article 6 of REMIT, in view of potential needs to align REMIT definitions with new relevant Union legislation in the fields of financial services and energy, or in view of new developments on wholesale energy markets or of REMIT implementing acts,
- Annual Report on the Agency activities under REMIT.

²⁰² The following activities/deliverables foreseen in the Work Programme adopted in September 2013 have been deprioritised (cancelled, postponed or in part combined with other activities/deliverables listed above) due to resource limitation or to the revised timeframe for the adoption of the implementing acts:

- Establishment of appropriate mechanisms to access emission allowances data,
- Monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation, in cooperation with NRAs, on the basis of data collected in connection with the REMIT implementing acts,
- Promotion of best practices for the implementation of REMIT. This activity is now foreseen as part of the activity “Coordination of market monitoring activities of NRAs, including at regional level, without prejudice to their responsibilities, aiming to ensure that NRAs carry out their tasks in a coordinated and consistent way, including guidance to NRAs, and coordination of NRAs’ investigation activities on cross-border market abuse instances, including the promotion of best practices.”

Annexes



Annex I

ACER

The Agency for the Cooperation of Energy Regulators (the Agency) is the European Union body created by the Third Energy Package to achieve the IEM.

The Agency was officially launched in March 2011 and has its seat in Ljubljana, Slovenia. As an independent European body which fosters cooperation among European energy regulators, the Agency ensures that market integration and harmonisation of regulatory frameworks are achieved in accordance with the EU's energy policy objectives.

The overall mission of the Agency, as stated in its founding regulation, is to complement and coordinate the work of national energy regulators at EU level and to work towards the completion of a single EU energy market for electricity and natural gas.

The Agency's missions and tasks are defined by the Directives and Regulations of the Third Energy Package, especially Regulation (EC) No 713/2009 establishing the Agency. In 2011, the Agency received additional tasks under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT).

According to REMIT, the Agency is responsible for monitoring wholesale energy markets to detect market abuse. Wholesale energy markets monitoring by the Agency shall be based on timely data collection of transactions executed and orders placed on wholesale energy markets in the European Union (trading data), as well on as fundamental data, that is data related to the operational conditions of the energy systems in both the electricity and gas sectors.

More information on the Agency can be found on the website: www.acer.europa.eu.

Further information on the Agency's activities under REMIT can be found on the website: <http://www.acer.europa.eu/remit/Pages/default.aspx>.

Annex II

List of abbreviations

ACER/Agency	Agency for the Cooperation of Energy Regulators
AMIT WG	ACER Market Integrity and Transparency Working Group
ARIS	Agency's REMIT Information System
CEREMP	Centralised European Registry of wholesale Energy Market Participants
EMIR	European Market Infrastructure Regulation
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSOG	European Network of Transmission System Operators for Gas
ESMA	European Securities and Markets Authority
IT TF	IT Task Force
LSO	Local System Operator
MAD	Market Abuse Directive
MiFID	Markets in Financial Instruments Directive
MMG TF	Market Monitoring Governance Task Force
MoU	Memorandum of Understanding
NRA	National Regulatory Authority
OTC	Over the Counter
PIA	Preliminary Initial Assessment
REMIT	Regulation on wholesale Energy Market Integrity and Transparency
RIA	Reviewed Initial Assessment
RRM	Registered Reporting Mechanisms
SSO	Storage System Operator
STR	Suspicious Transaction Report
TSO	Transmission System Operator
UMMs	Urgent Market Messages
WMS TF	Wholesale Markets Surveillance Task Force

Annex III

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List of related documents

- ACER Work Programme 2013, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf
- 1st edition of ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf
- 2nd edition of ACER Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency <http://www.acer.europa.eu/remit/Documents/2nd%20edition%20of%20ACER%20Guidance%20on%20the%20application%20of%20REMIT.pdf>
- 3rd edition of ACER Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency http://www.acer.europa.eu/remit/Documents/REMIT%20ACER%20Guidance%203rd%20Edition_FINAL.pdf
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 <http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions.pdf>
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 concerning balancing market and transportation contracts <http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions%20balancing%20and%20transportation.pdf>
- Regulation (EC) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency <http://eur-lex.europa.eu/>
- REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators <http://eur-lex.europa.eu/>
- REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003 <http://eur-lex.europa.eu/>

- REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 <http://eur-lex.europa.eu/>
- COMMISSION REGULATION (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 3/60 714/2009 of the European Parliament and of the Council <http://eur-lex.europa.eu/>
- Directive 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on insider dealing and market manipulation (market abuse), <http://eur-lex.europa.eu/>
- Directive 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on markets in financial instruments, <http://eur-lex.europa.eu/>
- DIRECTIVE 2004/109/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC <http://eur-lex.europa.eu/>



Publishing date: 10/06/2014

Document title: REMIT Annual Report 2014

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