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Agency for the Cooperation
of Energy Regulators

ACER's annual report on its activities under REMIT in 2014



ACER's Annual Report on its Activities under Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) in 2014

Prepared by:

ACER, Market Monitoring Department
September 2015



ACER -
Agency for the Cooperation of Energy Regulators
Trg republike 3, 1000 Ljubljana, Slovenia

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If you have any queries relating to this document, please contact:

ACER
Mr. David Merino
Tel. +386 (0)8 2053 417
Email: david.merino@acer.europa.eu

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Foreword by the ACER Director



I am pleased to present this third 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 2014.

REMIT plays an important role in the completion of a well-functioning internal energy market within the European Union: well-functioning markets should work on the basis of reliable price signals, i.e. price signals which reflect the demand and supply fundamentals and are not distorted by abusive market behaviour. The effective implementation of REMIT, with its aim of detecting and deterring market abuse, is thus a major pre-requisite for efficient market integration and the security of energy supply – essential components of the Energy Union strategy.

REMIT introduces a new and 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 to the Agency.

Despite a level of resources clearly inadequate in relation to its mandate, which forced the Agency to significantly revise its Work Programme in March 2014 with the deprioritisation of a number of activities, significant progress was achieved in the Agency's work to implement REMIT.

In 2014, the Agency continued with the development of the procedures and the IT platforms to support the collection and analysis of trade and fundamental data, as envisaged within the REMIT framework. In June 2014, the development of the Centralised European Register of Energy Market Participants (CEREMP) platform was completed and access provided to National Regulatory Authorities (NRAs), including those which want to use a purposely-developed CEREMP module for handling the national registration process. With respect to the other parts of the Agency's REMIT Information System (ARIS), a number of pilot projects, involving a large number of interested parties and focusing on data collection and data sharing, were run during the year.

In December 2014, the Implementing Acts were adopted by the European Commission. They entered into force on 7 January 2015, and the preparatory work conducted by the Agency last year led to the publication, already the following day, of a number of key documents to provide market participants and other stakeholders essential information for the preparation of trade and fundamental data reporting as of October this year.

On the same date, the Agency launched its new REMIT Portal – the single point of access for all REMIT-related applications – and opened the registration of Registered Reporting Mechanisms (RRMs).

ARIS is therefore operational since 8 January 2015. With data collection starting, in a first phase, on 7 October 2015, 2015 will finally see the go-live of the REMIT data collection and monitoring framework, which will then be fully implemented in the course of 2016. In a transitional period, the implementation and operational phases will therefore overlap. Once data collection starts, the Agency will have the information required to effectively and efficiently detect and deter market manipulation and monitor trading based on inside information, ensuring market integrity and transparency for the benefit of European energy consumers and citizens.

These achievements are particularly significant considering that the Agency has so far been assigned only a small part of the human resources required for the implementation of REMIT, and that the funds for the development of the Agency's REMIT Information System were made available to the Agency, through a transfer from DG Energy, only at the end of 2013.

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 – as well as a large number of energy market participants and other stakeholders, participating in pilot projects, expert groups or otherwise inputting into the process. I would like to express my gratitude to all of them for their continuous constructive cooperation and support.

I would also like to commend the persevering dedication and effort of my colleagues in the Market Monitoring Department, who, under the leadership of Volker Zuleger, are making REMIT implementation a reality.

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 human resources – in terms of expert market analysis capabilities – available to the Agency. In fact, the resources currently available, while were sufficient to perform system development and coordination at the limited scale undertaken in 2014, are clearly inadequate to monitor and assess the amount of information on wholesale energy markets which the new monitoring framework will make available.

The Agency will work in 2015 to complete its REMIT implementation activities and to define the most efficient approach to market monitoring on the basis of the available resources. However, it would be most unfortunate if the effectiveness of wholesale energy market monitoring, which is an integral part of the Energy Union strategy, were jeopardised by a lack of resources, especially given that, also based on the US experience, the benefits of market integrity and transparency are likely to be significantly greater than any resource costs involved in effective monitoring. Therefore, I am confident that the Agency will soon be put in a position to fulfil its mission under REMIT in the effective way that European energy consumers deserve.

Ljubljana, September 2015


Alberto Pototschnig
ACER Director

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1 Introduction

- 1 This is the third annual report concerning the activities of the Agency for the Cooperation of Energy Regulators (hereafter: 'the Agency') under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). In this report, the Agency presents the activities undertaken in 2014 in order to implement REMIT. In 2014 the adoption of Commission Implementing Regulation (EU) No 1348/2014 (hereafter: Implementing Acts), following a comitology procedure, represented an important milestone in the implementation of REMIT. The Implementing Acts define both the scope and timeline for REMIT implementation and their entry into force outlined the further timeline for the full application of the new monitoring framework for wholesale energy markets and triggered several deliverables for the Agency. Therefore, the Agency's workload under REMIT increased drastically towards the end of 2014 and beyond.
- 2 REMIT was published in the Official Journal of the European Union on 8 December 2011. On 28 December 2011, the prohibitions of insider trading, market manipulation and attempted market manipulation, the obligation for market participants to publish inside information and the requirement for persons professionally arranging transactions (PPATs) to establish and maintain effective arrangements to detect market abuse and to notify suspicious cases to National Regulatory Authorities (NRAs), came into force.
- 3 The Agency was required to determine a format for the European register of market participants within six months from the entry into force of REMIT, i.e. by 28 June 2012. 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 for infringements of REMIT.
- 4 The adoption of the Implementing Acts on 17 December 2014, and their entry into force on 7 January 2015, triggered important deadlines for data collection under REMIT. Market participants and third parties reporting on their behalf will have:
 1. nine months, i.e. until 7 October 2015, to prepare for the reporting of reportable wholesale energy contracts admitted to trading at Organised Market Places and of fundamental data from the ENT-SOs central information transparency platforms, and
 2. fifteen months, i.e. until 7 April 2016, to prepare for the reporting of the remaining reportable wholesale energy contracts (OTC standard and non-standard supply contracts; transportation contracts) and of reportable fundamental data from TSOs, LSOs and SSOs.
- 5 The milestones introduced by the Implementing Acts for REMIT implementation are presented in the timeline below.

Figure 1: Timeline for the Implementation of REMIT



- 6 The activities of the Agency with respect to REMIT are to be performed in two stages:
1. The **implementation stage**, during which the Agency puts in place the IT tools and the procedures for effectively monitoring wholesale energy markets. This includes data exchange with NRAs and other authorities with which the Agency will cooperate at national and EU level. This stage started with the entry into force of REMIT on 28 December 2011. In 2014, the Agency continued to develop IT systems for the registration of market participants, data collection and data sharing, and the effective monitoring of wholesale energy markets.

The implementation stage will be completed within 18 months following the entry into force of the Implementing Acts, and will therefore continue until 7 July 2016; at this time, the reporting obligation on market participants will take full effect and so the full monitoring framework should be in place when the second phase of reporting will have started, including the backloading of outstanding contracts from the second phase of reporting under the Implementing Acts. Therefore, the implementation stage overlaps with the operational stage described below.

2. The **operational stage**, during which the Agency is responsible for actively monitoring trading activities in wholesale energy markets in order 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, and in light of the state of the energy systems, to identify instances of possible market abuse and the reporting thereof to national competent authorities who are responsible for investigation and enforcement. The Agency is also responsible for coordinating investigations.

Even though the Agency was already called to act on instances of delayed publication of insider information or of suspected market abuse, or to coordinate cross-border investigations, since the entry into force of REMIT and its prohibitions and obligations for market participants, it considers the Implementing Acts' entry into force on 7 January 2015 as the actual starting point of the operational stage.

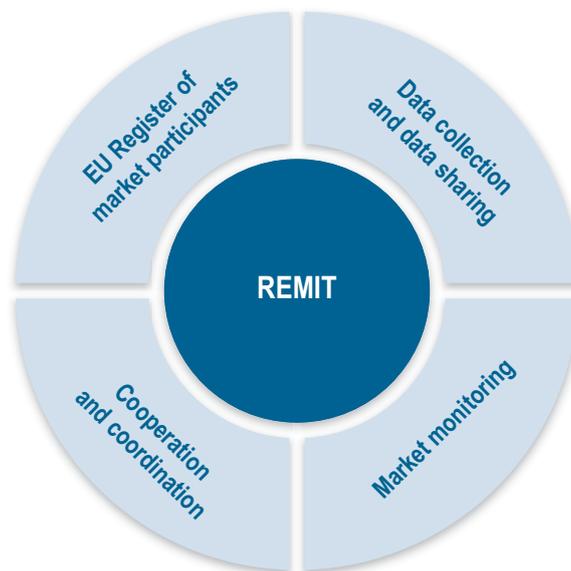
- 7 It is worth noting that due to the two phases of data collection under the Implementing Acts, the implementation stage and the operational stage will overlap for a significant **transitional period**, from 7 January 2015 to 7 July 2016. During this transitional period, the Agency will require resources simultaneously to support the already deployed IT solutions and to perform market monitoring and coordination activities for the first phase of data collection, while implementing additional IT solutions in time for the second phase of data collection under the Implementing Acts.
- 8 When REMIT is fully implemented, the Agency will be responsible for collecting and monitoring wholesale energy market data to identify possible instances of market abuse. After an initial assessment, the Agency will notify the relevant NRAs who will then carry out investigations and take appropriate action to remedy any breach found. Market monitoring under REMIT is an important task for the Agency as market integrity and transparency are essential for well-functioning energy markets, and for promoting the confidence of market participants and final consumers.

2 The Agency's REMIT Implementation Activities in 2014

2.1 Introduction

- ⁹ The implementation of REMIT was a priority for the Agency in 2014. The activities described in this chapter are classified according to four categories: the EU register of market participants, data collection and data sharing, market monitoring and, cooperation and coordination.

Figure 2: The Agency's Activities under REMIT



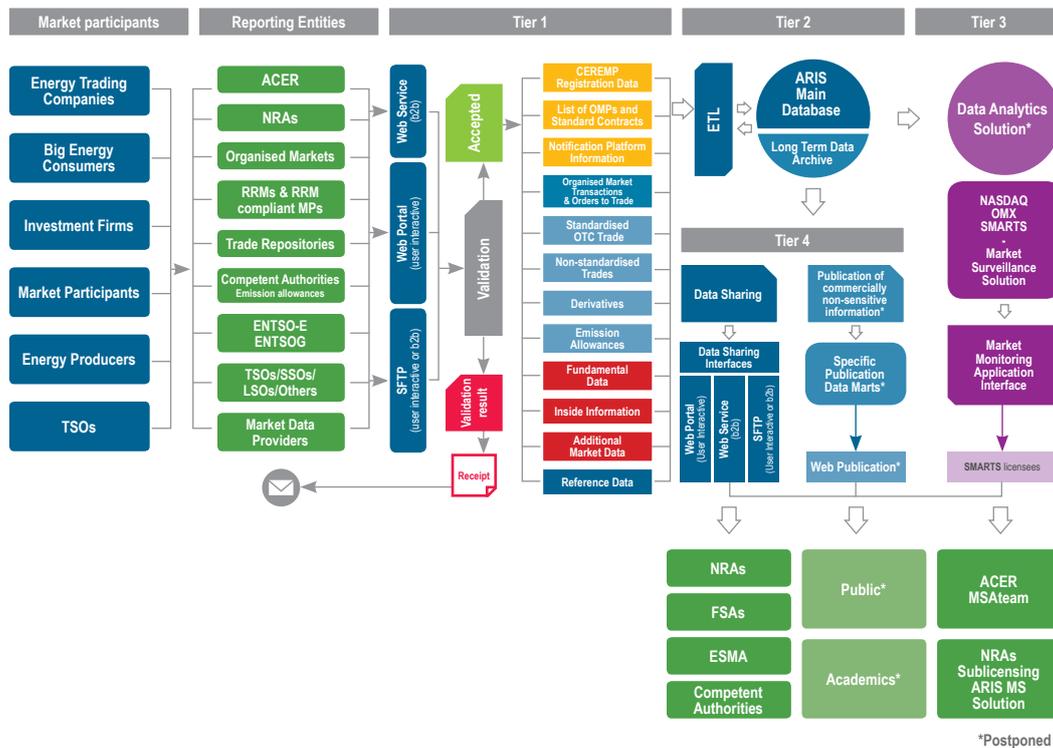
- ¹⁰ The Agency continued in 2014 to develop the policy framework and IT infrastructure needed in order to fulfil its responsibilities, and to execute the tasks assigned to it under REMIT.

- 11 The Agency's IT implementation of REMIT was carried out in conjunction with IT consultants selected on the basis of several IT procurement procedures since 2012:
1. 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), Capgemini Italia S.p.A. (2nd contractor) and Intrasoft International S.A. (3rd contractor). On this basis, the Agency hitherto entered into specific contracts for software development with Lutech.
 2. In December 2012, the Agency signed a framework contract (ACER/OP/ADMIN/21/2012) with OMX Technology AB (hereafter referred to as NASDAQ OMX Technology) for the delivery of its SMARTS Integrity market surveillance system 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 in order to detect insider trading, market manipulation and attempted market manipulation across European wholesale energy markets. The solution will facilitate the analysis of electricity and gas trading across the EU and provide the Agency with a consolidated view on a pan-European basis.
 3. In December 2013, the Agency signed a framework contract (ACER/OP/MMD/12/2013) with Telekom Slovenije regarding IT hosting services.
 4. Finally, in early 2014, the Agency signed framework contracts (ACER/OP/MMD/09/2013) with KPMG Advisory S.p.A. and S&T Slovenija, informacijske rešitve in storitve, d.d. for the provision of IT consultancy services for the implementation of the Agency's REMIT Information System (ARIS). On this basis, the Agency hitherto entered into specific contracts for IT consultancy services with S&T.
- 12 On the basis of the significant preparatory work undertaken by the Agency in 2012 and 2013, the Agency implemented its concept for the Centralised European Register of Wholesale Energy Market Participants (CEREMP) and the Agency's REMIT Information System (ARIS), based on four pillars or tiers:
1. **Tier 1 of ARIS** supports the collection of the reported trade and fundamental data. The scope and details for the data to be reported under Tier 1 is defined by the European Commission in the Implementing Acts. CEREMP became an integral part of ARIS Tier 1 in 2014.
 2. **Tier 2 of ARIS** is the main data warehouse, where all the reported trade and fundamental data, as well as the registration data from market participants, will be stored.
 3. **Tier 3 of ARIS** is the market surveillance system, which will automatically screen and analyse the data collected and processed in Tier 1 and 2, in order to identify anomalies that might constitute cases of market abuse (i.e. suspicious events). The system will notify the Agency's surveillance experts in the Market Monitoring Department by alerting them of such cases. The market surveillance system will also be used for supporting the investigations conducted by NRAs in coordination with the Agency.
 4. **Tier 4 of ARIS** is the data sharing system. According to Article 10 of REMIT, the Agency shall establish mechanisms to share the information stored 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.

13 This concept was further developed, and resulted in October 2014 in the comprehensive IT solution – ARIS – for the support of REMIT data collection and processing, market monitoring and data sharing.

14 Figure 3 illustrates the concept of ARIS.

Figure 3: The ARIS High Level Design



15 In early 2015, the Agency deployed its first public access page to the ARIS system i.e. the REMIT Portal. Through the Portal, a number of applications were available immediately after the deployment. The Portal is now the main access point for the ARIS system.

16 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 by ARIS.

2.2 Registration of Market Participants

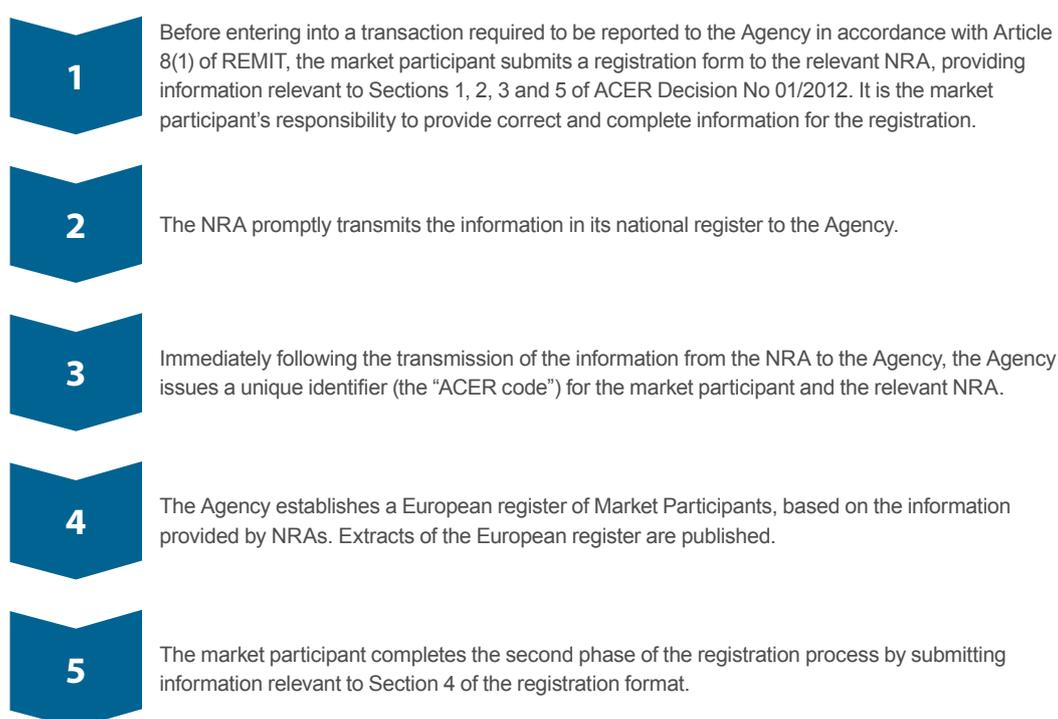
- 17 According to Article 9 of REMIT, market participants entering into transactions, which are required to be reported to the Agency under REMIT, shall register with the NRA in the country in which they are established or active. A market participant shall register only with one NRA. Therefore, Member 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 the 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 the market participants, NRAs shall transmit the information in their national registers to the European Register of Market Participants, maintained by the Agency through 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 Development

2.2.1.1 Guidance to NRAs on the Registration of Market Participants

- 18 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.
- 19 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.

Figure 4: Summary of the Registration Process



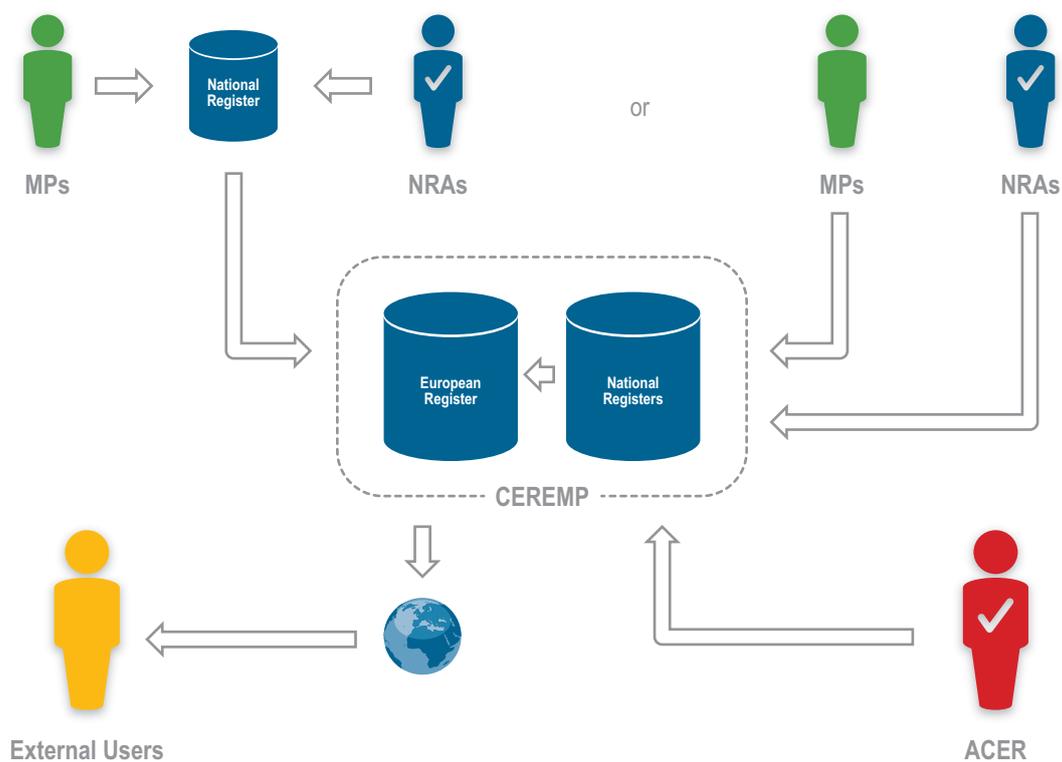
2.2.1.2 Publication of Extracts of the European Register of Market Participants under REMIT

- 20 REMIT sets forth a requirement for the Agency to establish a European Register of Market Participants. According to Article 9(3) of REMIT, the Agency may also decide to make the European Register of Market Participants, or its extracts, publicly available, provided that commercially sensitive information regarding individual market participants is not disclosed.
- 21 The European Register of Market Participants is based on the information provided by NRAs. That information is provided to NRAs by the registered market participants in each EU Member State.
- 22 The Agency believes that the purpose of the publication of extracts of the European register should be twofold. Firstly, it should allow for the publication of the necessary information for market participants to complete their registration, and thereby comply with the obligations according to Article 9(1) of REMIT. Secondly, the publicly available extracts of the European register should improve the transparency of wholesale energy markets.
- 23 On 7 November 2013, the Agency launched a public consultation on the publication of extracts of the European register. The aim of the public consultation was to collect views on the information necessary for market participants to (i) fulfil their registration obligations according to Article 9(1) of REMIT and, (ii) to improve the transparency of wholesale energy markets.
- 24 The public consultation launched by the Agency solicited feedback from various respondents on the publication of extracts of the European register. The consultation resulted in a total of nine responses, three of which were from European associations.
- 25 As far as the first issue is concerned, the respondents considered the scope of the data to be published for the registration purpose, i.e. the full name of the market participant and unique identification code, as appropriate/sufficient, and it was stressed in several replies that it is not necessary to publish additional data. On the other hand, the respondents also agreed with the purposed scope of information to be published, and welcomed such scope as appropriate for transparency purposes. Overall, the respondents' feedback was in line with the Agency's view.

2.2.2 Software Development

- 26 The technical development of CEREMP started in early 2013, and was finalised in June 2014. CEREMP was designed to maintain the European Register of Market Participants, based on national registers established by NRAs.
- 27 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



28 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). If an NRA decides 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).

- 29 Three NRAs opted to develop their own systems for the registration of market participants, out of which two chose to interface their own national systems with CEREMP via web services, and one NRA chose to transmit the data from its national register to CEREMP via batch upload or data entry. The remaining NRAs decided to use CEREMP for managing their national registers.
- 30 At the end of 2013, the first cycle of CEREMP testing was initiated. NRAs were asked to run the specially designed tests and to provide feedback on the system. NRAs were highly recommended to also involve market participants. The testing period was prolonged until mid-January 2014. The system was refined thereafter, and requests from NRAs for changes to be made were taken into account in a new development cycle.
- 31 Following the finalisation of the development stage, the second cycle of testing began. Unlike the first testing cycle, when the test cases were designed to examine the entire system, the purpose of the second testing cycle was to test only the newly deployed functionalities.
- 32 In order to facilitate a smooth handover of the system to the NRAs, the Agency drafted a 'go-live' plan. The plan summarised all the requirements which NRAs needed to meet before the handover, and introduced a phased approach to the handover process.
- 33 CEREMP was successfully launched in June 2014. However, only a few NRAs were able to meet the preconditions specified in the 'go-live' plan, and therefore, the handover process continued until the end of 2014 and beyond.
- 34 Significant documentation related to CEREMP was produced by the Agency. The Agency also provided NRAs with a user guide for each type of NRA (type a/B), as well as a Registration User Manual for Market Participants which NRAs may use for the information of market participants.

2.3 Data Collection and Data Sharing

2.3.1 Policy Development

2.3.1.1 Data Collection Policy

³⁵ Already the draft Implementing Acts anticipated that the Agency shall provide supporting documentation in order to facilitate reporting and to ensure the operational reliability of data reporting. The Agency prepared a so-called REMIT Reporting User Package to meet this requirement, which consists of the following documents:

1. List of Organised Market Places pursuant to Article 3(2) of the Implementing Acts;
2. List of Standard Contracts pursuant to Article 3(2) of the Implementing Acts;
3. Transaction Reporting User Manual (TRUM) according to Article 5(2) of the Implementing Acts;
4. Manual of Procedures for Transaction and Fundamental Data Reporting according to Article 10(3) of the Implementing Acts, and;
5. Requirements for the Registration of Registered Reporting Mechanisms (RRM Requirements), together with an RRM technical specification document available to identified RRM applicants upon signing a Non-Disclosure Declaration, pursuant to Article 11(1) of the Implementing Acts.

³⁶ To summarise, the RRM Requirements specify the characteristics and requirements of the reporting parties, the Manual of Procedures delineates how to report, the TRUM what to report, and the lists when to report. The REMIT Reporting User Package will be updated whenever necessary.

³⁷ During 2014, the Agency consulted intensively with stakeholders on the REMIT Reporting User Package. This enabled the Agency to deliver it in the form of staff working documents in December 2014, alongside the Commission's adoption of the Implementing Acts, and to publish the documents upon entry into force of the Implementing Acts on 8 January 2015, as required. Only the List of Standard Contracts was published within three months following the adoption of the Implementing Acts, i.e. on 17 March 2015. The following sections describe the consultation process that led to the adoption of the REMIT Reporting User Package.

a) ACER's Transaction Reporting User Manual (TRUM)

- 38 On 30 October 2013, the Commission presented a draft of the Implementing Acts to be adopted pursuant to Article 8 of REMIT. The draft Implementing Acts provided that the Agency shall explain the details of the reportable information, referred to in Article 4 of the draft Implementing Acts, in a user manual. According to the draft Implementing Acts, the reporting obligation would come into force six months after the entry into force of the Implementing Acts as regards transactions, including orders to trade, in relation to standard contracts, and derivatives related to those contracts. Therefore, the first edition of the TRUM would focus primarily on that reportable information.
- 39 Transaction reports are a key means of establishing the nature of questionable transactions, their timing and the parties involved. This information is needed for the Agency or NRAs to carry out a preliminary assessment of the behaviour of market participants, and to decide whether to request NRAs carry out further analysis. Similarly, transaction reports are very important as evidence in proceedings carried out by NRAs, as they provide an audit trail of the complete transaction.
- 40 On 27 March 2014, the Agency launched a public consultation on the draft TRUM, based on the draft Implementing Acts presented by the Commission in October 2013. The public consultation document consisted of seven questions, and the consultation lasted until 5 May 2014. A public workshop was held on 3 April 2014 in order to discuss the public consultation document with stakeholders.
- 41 The public consultation resulted in a total of 37 responses, six of which were from European or international associations.
- 42 In general, the respondents welcomed the timely consultation on the draft TRUM, and stressed the importance of the document for market participants and reporting entities. Several respondents, however, highlighted that the draft TRUM lacked the level of detail required to provide sufficient guidance to market participants. Moreover, the respondents called for a more detailed TRUM as soon as possible, in order to provide adequate guidance on the reporting.
- 43 The input received during the first consultation has been taken into consideration by the Agency in its continuous work on the TRUM.
- 44 The second public consultation on the TRUM was based on the draft Implementing Acts published by the Commission in July, and took into account the input received during the first consultation in spring 2014. It included a consultation on the List of Standard Contracts. The public consultation document consisted of 15 questions, and the consultation lasted until 2 September 2014. A public workshop was held on 16 July 2014, in order to discuss the public consultation document with stakeholders.
- 45 In total, the Agency received 32 responses to the second consultation, eight of which were from European or international associations.
- 46 The respondents highlighted that the quality of the document had improved significantly over recent months, and noticed that much of the feedback provided in the first consultation had been taken into account. The addition of examples on how to report various trading scenarios was considered particularly useful.
- 47 The draft TRUM was reviewed in light of the input received, and modified where considered necessary.

b) ACER's RRM Requirements for Transaction Reporting under REMIT

- 48 The draft Implementing Acts provided that, in order to ensure the efficient, effective and safe exchange and handling of information, the Agency, after consulting with reporting parties, shall develop the technical and organisational requirements for submitting data.
- 49 For this purpose, the Agency has developed Requirements for the registration of Registered Reporting Mechanisms (RRMs). The Agency will assess whether reporting parties comply with the RRM Requirements. Reporting parties who comply with the requirements will be registered as RRM by the Agency.
- 50 A first public consultation on this topic was held in the context of the Agency's public consultation on the technical requirements for data reporting under REMIT from 22 March to 13 May 2013. The second public consultation on the RRM Requirements was based on the draft Implementing Acts published by the Commission in July 2014.
- 51 This public consultation, launched on 22 July 2014, intended to collect views from all parties interested in the implementation of REMIT, in particular, those views relating to the RRM Requirements.
- 52 The second public consultation document on RRM Requirements consisted of 15 questions, and the consultation lasted until 2 September 2014. A public workshop was held on 16 July 2014 to discuss with stakeholders the public consultation document, the purpose of which was to collect views on the RRM Requirements from all the parties interested in the implementation of REMIT.
- 53 The public consultation solicited feedback from various stakeholders. In total, the Agency received 25 responses to the second consultation, three of which were from European or international associations.
- 54 In general, the respondents welcomed the timely consultation on the draft RRM Requirements, and stressed the importance of the document for market participants and reporting entities. The respondents highlighted that the quality of the document had improved significantly over recent months, and noticed that much of the feedback provided in the first consultation had been taken into account.
- 55 The draft RRM Requirements were reviewed in light of the input received, and modified where considered necessary.

c) ACER's Manual of Procedures on Transaction and Fundamental Data Reporting under REMIT

- 56 On 24 June 2014, the Agency launched a public consultation on the draft Manual of Procedures. The consultation paper described the scope and purpose of the Manual of Procedures, and also included a number of consultation questions.
- 57 The Agency received 12 responses, eight of which were provided by European or international associations, and four from individual market participants. In general, the respondents welcomed the structure and purpose of the Manual of Procedures. Also, it was stated that the Manual of Procedures provides market participants with valuable information to build correct and efficient data reporting processes.
- 58 The draft Manual of Procedures was reviewed in light of the input received, and modified where considered necessary.

d) List of Organised Market Places and List of Standard Contracts

- 59 On 3 October 2014, the REMIT Comitology Committee of the European Commission voted for the Draft Implementing Acts to be adopted pursuant to Article 8 of REMIT. The Draft Implementing Acts provided that the Agency, in order to facilitate reporting, shall draw up and publish a List of Organised Market Places upon the entry into force of the Implementing Acts.
- 60 In order to prepare for the publication of the List of Organised Market Places, the Agency launched an open call for organised market places to register with the Agency during October 2014. The registrations received through this open call formed the basis of the provisional List of Organised Market Places. Between 14 November and 11 December 2014, the Agency conducted a public consultation on the provisional List of Organised Market Places, and also identified five additional questions which were added to the public consultation.
- 61 29 organisations from different EU Member States and EEA countries responded to this public consultation.
- 62 Some omissions and errors on the list were identified by respondents. Hence, the Agency amended the provisional List of Organised Market Places, taking into account the responses received from public consultation participants.
- 63 The List of Organised Market Places was published on the Agency's REMIT Portal on 8 January 2015. The purpose of the publication is to allow the identification of the organised market places with regard to transaction reporting according to Article 6(1) of the Implementing Acts. The publication of the List of Organised Market Places ensures the Agency's compliance with Article 3(2), first sub-paragraph, of the Implementing Acts. The Agency will update the List of Organised Market Places regularly.
- 64 The List of Standard Contracts according to Article 3(2), first sub-paragraph, of the Implementing Acts derives from the List of Organised Market Places, and was therefore not required to be published upon the entry into force of the Implementing Acts. It was therefore the only component of the REMIT Reporting User Package that was published at a later stage, on 17 March 2015, following a public consultation in the context of the public consultation on the draft TRUM.

2.3.1.2 Data Sharing

- 65 Article 10(1) of REMIT sets forth 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.
- 66 Article 10(2) of REMIT also provides that access to data shall be granted only to those authorities who have set up systems enabling the Agency to meet the requirements of operational reliability referred to in Article 12(1) of REMIT. 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 Agency¹. The Agency shall, therefore, also ascertain that those authorities are able to maintain an equally high level of security².
- 67 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 the relevant information (i.e. the relevant trade and fundamental data) held by the Agency. It further states that NRAs may also monitor trading activity in wholesale energy products at a national level.
- 68 In 2013, the Agency started to implement the data sharing policy developed that same year in cooperation with NRAs.

1 See Article 12(1) REMIT.

2 See Recital 23 REMIT.

2.3.2 Software Development

2.3.2.1 Development of IT Solutions for Data Collection and Data Sharing

- 69 In order to adapt to the constantly changing conditions of the REMIT implementation, the Agency adopted an agile approach to IT development. Based on that approach, the ARIS Prototype Release 2 was delivered in mid-July 2014. Similarly, the next major development cycle was completed at the end of October 2014, with the delivery of the ARIS Prototype Release 3.
- 70 The ARIS Prototype Release 3 had integration as its main objective. All of the various components which were developed as standalones now constitute tightly coupled parts of ARIS.
- 71 Tier 1 Data Collection Interfaces were enhanced by implementing new as well as updated requirements. At the moment, three fully functional interfaces for uploading data (WebGUI, web services, and SFTP) are available, and multiple data types are supported for data collection (e.g. standard contracts, electricity fundamental data etc.). Additional reference data collection (such as exchange rates) is also supported.
- 72 In addition to the technical validation, with the purpose of verifying the compliance of the files submitted to ACER, good progress was made in 2014 with the implementation of the business validation rules for the actual content of the files in the form of, for example, naming convention, digital signature and encryption. This will increase the quality of the data that ACER will be receiving. At Tier 2 (Data Warehouse) level, a significant amount of additional work was done in 2014 to improve the data model, and to allow for consistency between input data from Tier 1 and extracted data from Tier 2 to Tier 3. A fully integrated data flow (Tier 1-Tier 2-Tier 3) has been in practice since October 2014.
- 73 The Agency manages different system modules with various target user groups, and thus needs to administer user profiles, rights and activity within the system in a structured and controlled manner. This requirement was fulfilled in 2014 with the development and implementation of the Centralised User Management and Log Management consoles.
- 74 The RRM registration module was developed in 2014 according to the implementation plan set out by the Agency. At the beginning of 2015, the registration module was one of the key priorities in terms of testing and preparing for production.
- 75 The REMIT Portal is a central, web-based portal that allows the user community to retrieve relevant information. The Portal consists of a public section, including information that ACER publishes, such as the List of Organised Market Places, the List of Standard Contracts, and the European Register of Market Participants. In addition, the Portal is the starting point from which users can access the ARIS modules that are available to them. A document repository function is also provided by the REMIT Portal. The Portal was developed in 2014, and opened up to the public in early 2015. The Portal will be further improved and developed throughout 2015.
- 76 In 2015, ACER will be slowly shifting from development project activities to operations management. Various actions were taken in 2014 to ensure a smooth transition to this new regime. A service management framework was defined according to best practices, and is operational since the end of August 2014. In essence, this includes the setting up of the Central Service Desk (CSD), and all the necessary processes (e.g. incident management and change management), to ensure that the Agency provides quality support services to ARIS users.
- 77 The technical implementation of the data sharing solution started in July 2014, and will be completed by 7 October 2015.

2.3.2.2 Pilot Project for Data Collection (Second Phase)

- ⁷⁸ Whilst the Commission was preparing the Implementing Acts in 2013, the Agency had to assume that the data collection, according to Article 22, second subparagraph, and Article 8(1), (3), first subparagraph, (4) and (5) of REMIT, shall take effect six months after the date on which the Commission adopts the relevant Implementing Acts. Given the short formal timeframe for the implementation of the data collection, it was considered prudent to prepare for data collection and monitoring in advance. This was, and remains, essential to ensure the smooth implementation of REMIT. Therefore, the Agency initiated, and conducted, a Pilot Project focused on providing the basis for future data collection.
- ⁷⁹ The Agency launched the first phase of the REMIT Implementation Pilot Project on 11 July 2013, which continued throughout 2013, and primarily concentrated on the collection of data via 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 Pilot Project. 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.
- ⁸⁰ The second phase of the Pilot Project was launched on 25 November 2013. During this phase, the Agency aimed to further develop the data collection exercise, based on the Commission's draft Implementing Acts, and using the ARIS Operational Prototype. The data collection exercise, within the second phase of the Pilot Project, continued from April to July 2014.
- ⁸¹ Parties wishing to take part in the second phase of the REMIT Pilot Project were required to sign a Non-Disclosure-Agreement (NDA) with the Agency, where applicable, in order to ensure confidentiality in relation to the data submitted within the Pilot Project. A standard NDA for the second phase of the Pilot Project was prepared and circulated to the participants in February 2014.

82 The main lessons learned from the Agency's REMIT Implementation Pilot Project can be summarised as follows:

- **The frequent bilateral interaction between the Agency and the Pilot Project participants facilitated planning and helped to set the right expectations from the start of the data submission exercise.** As a result of the first phase of the Pilot Project, the Agency expanded the REMIT implementation team, dedicating additional resources to the second phase of the Pilot Project. This enabled the Agency to devote more time to working on a bilateral basis with the participants of the Pilot Project relating to the data submission exercise. Both the Agency and the Pilot Project participants found the bilateral interaction with reporting entities constructive. The Agency aims to continue to make itself available to assist reporting entities, both during the remainder of the implementation phase and beyond.
- **Timely access to the relevant documentation needed for data reporting, including e.g. user guides, reporting manuals and technical specifications, was crucial.** Although several Pilot Project participants stressed that the documentation provided by the Agency was clear, it was also highlighted that there is a need to define a clear process for updating the documentation, and communicating the latter to the relevant reporting entities. In order to facilitate the sharing of the documentation with the reporting entities, the Agency decided to develop a web-based REMIT Portal, where all the relevant information related to data reporting under REMIT will be published and kept up-to-date.
- **Access to timely and high-quality technical support was vital for the success of the data submission exercise within the Pilot Project.** The establishment of a dedicated Central Service Desk (CSD) to support participants throughout the process, was considered highly useful by the Pilot Project participants. Access to such technical support will most likely be crucial also once the data reporting obligation under REMIT comes into force.
- **The data collection exercise within the second phase of the Pilot Project demonstrated that significant effort will be required from market participants to properly prepare for data collection** in order not to delay the data submission process.
- **XML schemas for standardised trades and orders to trade are very complex and should be simplified.** This was done in 2014, and the simplified schemas were distributed to the Pilot Project participants. No data was collected using the new schemas in 2014, but the Agency will be able to convert the collected data to a new format and simulate the submission process in order to test the final solution.
- **Industry XML schemas for fundamental data can be used even though some minor issues remained.**
- **Even though the technical solution for data collection was ready in time and the manuals were released two weeks in advance, it took longer than expected for most Pilot Project participants to submit the data.** Nevertheless, some Pilot Project participants successfully submitted data (both trade and fundamental) within only a few days following the launch of the data collection IT solution.

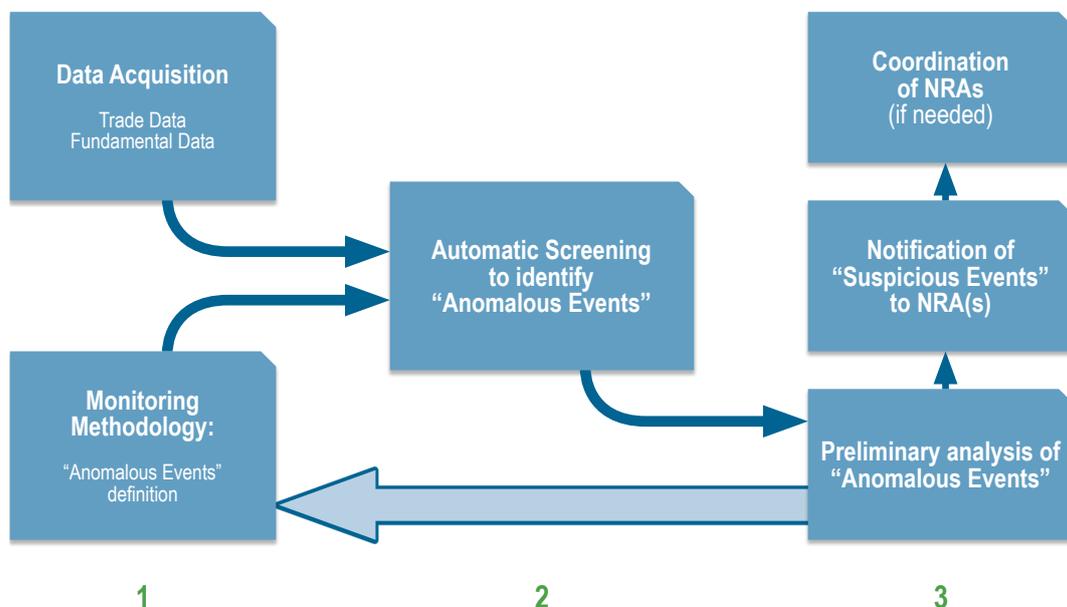
2.4 Market Monitoring Solution

83 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 surveillance of the 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 of REMIT.

2.4.1 Policy Development

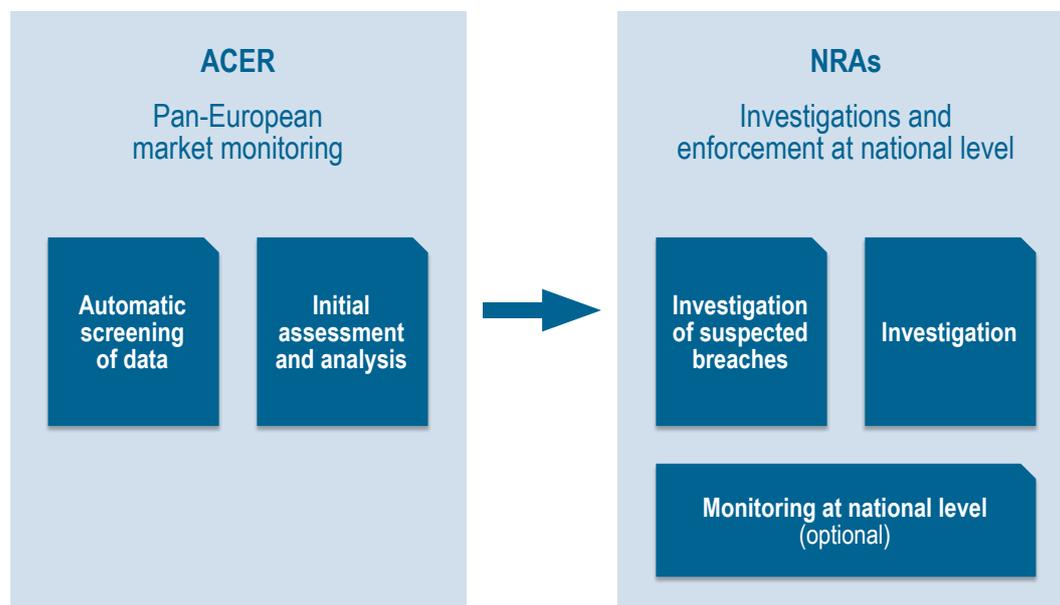
84 Since the very beginning of the REMIT implementation in 2011, the Agency has been working on the development of a market surveillance approach. This approach was further developed during 2013 and 2014. The figure below shows a schematic view of the Agency's market surveillance approach:

Figure 6: The Agency's Market Surveillance Approach



85 The automated screening will form part of the Agency's surveillance activities. Article 16(4) of REMIT also requires that the Agency carries out an initial assessment or analysis 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 the two-step approach, which is explained in more detail in the section relating to the Agency's market monitoring strategy (see Section 3.3).

Figure 7: The Agency's Market Monitoring Approach



2.4.2 Software Customisation

⁸⁶ In December 2012, the Agency concluded a Framework Contract with NASDAQ 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. The SMARTS delivery project continued in 2014, and will be concluded in line with the timeline for data collection according to the Implementing Acts.

⁸⁷ NASDAQ OMX Technology delivered two test releases of SMARTS to the Agency in the second half of 2014. The product has clearly evolved during this period, and there have been valuable interactions between the Agency and NASDAQ OMX regarding the key issues and suggestions for the Agency's Market Monitoring Solution. This included in particular the development of a market surveillance strategy for the definition of alerts, including the following:

1. cross-border manipulation;
2. cross-market manipulation;
3. cross-venue manipulation;
4. cross-commodity manipulation;
5. cross-product manipulation;
6. unusual price and volumes;
7. insider trading.

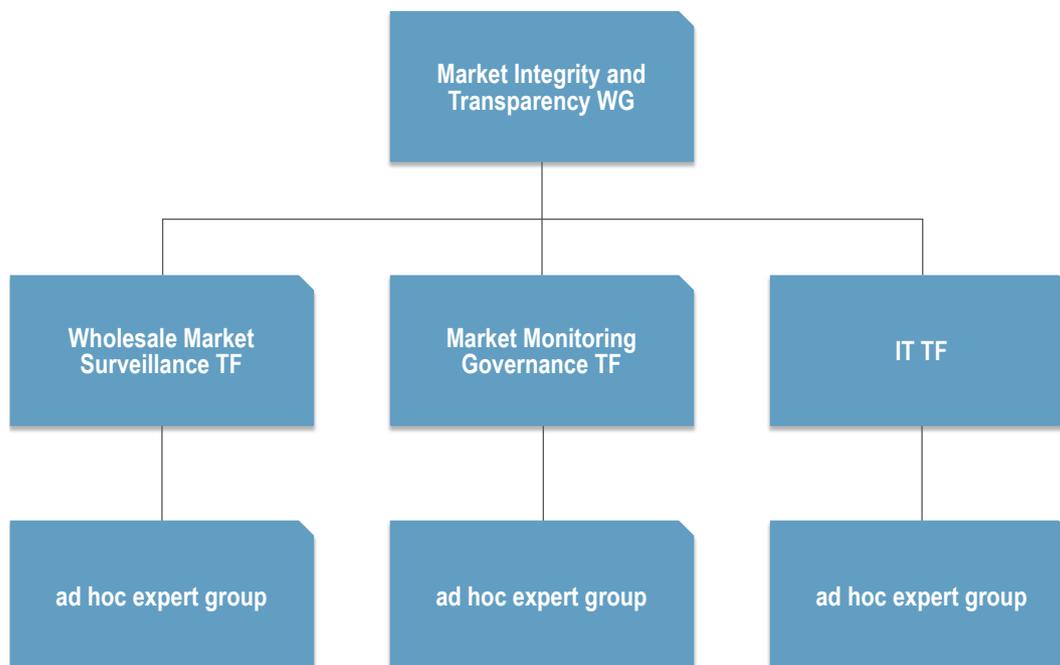
2.5 Coordination and Cooperation Framework

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

2.5.1 Working Groups, Task Forces and Expert Groups

- 90 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 since 2012 and during 2014:
- The Market Monitoring Governance Task Force (MMG TF) dealt with REMIT implementation issues such as the registration format and recommendations on data collection. Following the progression from the implementation stage to the operational stage after the entry into force of the Implementing Acts, this task force was abolished in early 2015.
 - The Wholesale Markets Surveillance Task Force (WMS TF) provides input for the continuous updating of the non-binding ACER Guidance, and facilitates the cooperation and coordination of market monitoring practices.
 - The IT Task Force (IT TF) deals with the implementation of the IT systems for registration, data collection and data sharing, as well as with IT security and other IT-related issues.
- 91 Both the AMIT WG and the task forces provide support to the Agency in carrying out its duties under REMIT.
- 92 Participants within both the AMIT WG and the respective task forces are bound by certain rules and regulations in the areas of confidentiality and intellectual property rights.
- 93 Being linked to each of the three task forces under the AMIT WG, the Agency established ad hoc expert groups. Each ad hoc expert group consisted of up to ten industry experts from market participants, industry organisations, energy exchanges or IT providers. The goal of the expert groups was to advise and assist the task forces in their respective areas.

Figure 8: Overview of the Working Group, Task Force and Expert Group Structure



⁹⁴ The mandate of the REMIT ad hoc expert groups came to a conclusion at the end of 2014 after having been in place for 2 ½ years.

2.5.2 REMIT Notification Platform

⁹⁵ Following the entry into force of REMIT, market participants and Persons Professionally Arranging Transactions (PPATs) are obliged to fulfil the obligations described in:

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

⁹⁶ 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 ACER website.

⁹⁷ In the second half of 2013, the Agency decided to update the web application for notifications, to prepare the new notification forms and to create a new Notification Platform user interface. The development of the Notification Platform commenced in January 2014. During the development cycle, the system was tested by NRAs and Agency staff.

⁹⁸ The data from the old platform was migrated to the new platform. The production system was launched together with CEREMP in June 2014. ACER decided to have a “trial period” to allow external users to familiarise themselves with the new application from 16 June 2014 to 31 July 2014.

⁹⁹ The new platform provides a more user-friendly environment, enhanced functionalities and new web forms for the reporting of relevant notifications. It is live since 1 August 2014.

2.5.3 REMIT Forum

¹⁰⁰ 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 sharing platform for the exchange of questions received from market participants, as well as discussion among NRAs and the Agency on possible answers. The general idea of the REMIT Forum is to provide a useful tool for ensuring the harmonisation of views on REMIT among the NRAs and the Agency. In April 2015, the Agency launched a new REMIT Forum.

2.5.4 Cooperation at Union Level and Beyond

¹⁰¹ The Agency aims to ensure a coordinated and consistent approach in order to address market abuse in wholesale energy markets, encompassing 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.

¹⁰² For this purpose, the Agency cooperates closely with NRAs, ESMA, the competent financial market authorities of the Member States and, where appropriate, national competition authorities. The Agency may also establish strong links with major organised market places.

¹⁰³ The scope and practicalities of implementing cooperation between NRAs, ESMA and the organised market places have been outlined within the Memoranda of Understanding (MoUs). Whilst the MoU with NRAs is a multilateral agreement, the MoUs with ESMA and the organised market places, respectively, are bilateral.

¹⁰⁴ 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

¹⁰⁵ In 2012, the Agency started to work towards establishing a multilateral MoU with the NRAs, in order to define the scope and practical terms of the cooperation under Articles 7 and 16 of REMIT between the Agency and NRAs, and with the aim of promoting the effective, efficient and coordinated monitoring of wholesale energy markets as required by REMIT.

¹⁰⁶ In accordance with the MoU, the cooperation between the Agency and NRAs is based on the principle of the distribution of powers between the Agency and NRAs without altering the distribution set forth by law, and in particular, by REMIT. It is also based on mutual collaboration, whereby both the Agency and the NRAs cooperate in order to fulfil their respective functions, as established by REMIT and other applicable legislation, and in the spirit of mutual trust and understanding.

¹⁰⁷ Apart from these general principles, the MoU sets out the procedures that the Agency and NRAs follow as regards notifications of suspected breaches of 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, in cases where the Agency considers that a possible breach is having, or has had, cross-border impact.

¹⁰⁸ In 2014, the general MoU with NRAs was supplemented by additional agreements on data sharing and the use of CEREMP.

2.5.4.2 MoU with ESMA

- ¹⁰⁹ Due to the numerous interconnections 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 to closely cooperate with ESMA, even ahead of the entry into force of REMIT.
- ¹¹⁰ Already in October 2011, the Agency and ESMA established ad hoc cooperation on different topics of common interest. The cooperation developed further in 2012, both with ESMA and with major national financial market authorities.
- ¹¹¹ Since the wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, price formation in both sectors is interlinked, and derivative and commodity trading are practised together on the wholesale energy markets. Within this framework, in 2013, the Agency and ESMA decided to sign an MoU to facilitate cooperation and a coordinated approach to wholesale energy markets, thereby ensuring that such cooperation should contribute to a coherent and consistent approach to the application of the market abuse framework as well as of reporting obligations under REMIT and EMIR. The MoU between the Agency and ESMA was signed on 18 July 2013, and 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 particular MoU.
- ¹¹² On the basis of the MoU, the Agency and ESMA invited each other on an ad hoc basis to relevant Working Group and Task Force meetings in 2014.
- ¹¹³ The Agency and ESMA should, according to the MoU, also consult each other when preparing guidelines, recommendations and draft regulatory technical standards concerning their respective competences, in order to ensure that the particularities of the financial and the energy sectors are fully taken into account.
- ¹¹⁴ In 2014, the Agency and ESMA cooperated on several topics at a technical level. However, effective and efficient cooperation is currently hampered by the scarce human resources both the Agency and ESMA are presently able to dedicate to liaise with each other on a continuous basis on all relevant topics of mutual interest. In particular, the Agency would ideally follow numerous initiatives and working groups from ESMA's side with a potential impact on wholesale energy markets, something which is currently impossible given the Agency's current human resources for REMIT tasks. The cooperation between the Agency and ESMA is therefore currently limited to the minimum necessary. The box below provides some details on the interactions as regards the discussion on physical forwards in wholesale energy markets.

Box 1: Physical Forwards in Wholesale Energy Markets

There has been a long debate in Europe about the definition of derivatives and commodity derivatives.

The Agency recently considered it necessary to clarify an important aspect of ESMA's technical advice on commodity derivatives specifying Section C 6, 7 and 10 of Annex I of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments, and amending Directive 2002/92/EC and Directive 2011/61/EU (MiFID II) in its Recommendation 1/2015 to the European Commission.

Whilst the recommendation was generally supportive of ESMA's technical advice, the Agency particularly pointed out that not only counterparties with production, consumption or storage capabilities may enter into physically settled contracts, but also a wider range of market participants, who play an important role in the energy markets. The Agency therefore emphasised that, in both gas and electricity markets, several market participants (for example, retail gas and electricity suppliers and gas shippers) may not have any storage, consumption or production capabilities. These operators bring together producers and consumers contributing to the foundation of a competitive energy market: the single European energy market that the Third Energy Package aims to establish. The Agency believes that without such clarification, ESMA's technical advice may have led to the misinterpretation that only counterparties with production, consumption or storage capabilities may enter into "must be physically settled" contracts. Such a misinterpretation could have several adverse impacts, and undermine the concept of intermediation which is central to the liberalisation of energy markets.

This is why the Agency provided the following recommendations to the European Commission:

1. The Commission's delegated acts should clarify that the 'provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity', and/or 'another method of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them (including notification, scheduling or nomination to the operator of an energy supply network) that entitles the recipient to the relevant quantity of the goods', as indicated by ESMA's technical advice, suffice to guarantee the physical delivery of the commodity.
2. The Commission's delegated acts should clarify that if a wholesale energy derivative contract, traded on an Organised Trading Facility (OTF), cannot be settled in cash, it must be physically settled, and therefore, this falls outside the scope of Annex I C.6 of MiFID II.
3. The Commission's delegated acts should clarify that a forward contract, that must be settled with a physical delivery (which are not derivatives), does not fall under the scope of Section C.6 of Annex I of MiFID II.

2.5.4.3 MoU between the Agency and Major Organised Market Places

- ¹¹⁵ According to Recital 18 of REMIT, the Agency may establish strong links with major organised market places when performing its tasks under REMIT. These links, in particular, the 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.
- ¹¹⁶ Following discussions between the Agency and representatives of major organised market places, including both energy exchanges and energy brokers, an MoU between the Agency and organised market places, concerning cooperation on market monitoring under REMIT, was agreed.
- ¹¹⁷ 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 relating to market monitoring under REMIT. Under the MoU, market monitoring experts from major 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.
- ¹¹⁸ 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.
- ¹¹⁹ Cooperation under the MoU is based upon the individual decision of each major organised market place.
- ¹²⁰ The MoU was finalised in 2013. By 31 December 2014, fifteen organised market places had signed the agreement.

2.5.4.4 MoUs with Third Countries' Authorities

- 121 In the course of 2014, an MoU with the United States Federal Regulatory Commission (FERC) was negotiated and finally signed on 8 January 2015.
- 122 In view of the growing globalisation of the world's wholesale energy markets, and the increase in cross-border operations and activities of market participants, the Agency and the FERC entered into an MoU regarding consultation, cooperation and the exchange of information related to the monitoring and oversight of wholesale energy markets, within the jurisdictions of the Agency and FERC.
- 123 The Agency and FERC express, through this MoU, their willingness to cooperate with each other in the interest of fulfilling their respective regulatory mandates, particularly in the areas of: (i) fostering market integrity and the transparency of wholesale energy markets for the benefit of energy consumers, (ii) monitoring trading activity in wholesale energy products to detect and prevent trading based on market abuse, (iii) and maintaining confidence in wholesale energy markets.
- 124 Moreover, through this MoU, the Agency and FERC express their intention to consult with each other, regularly, at staff level regarding: (i) general supervisory issues, including with respect to regulatory or oversight developments; (ii) issues relevant to the operations, activities, and regulation of wholesale energy markets; and (iii) any other areas of common supervisory interest. Cooperation is acknowledged to be most useful as regards, but is not limited to, the ongoing monitoring or oversight of wholesale energy markets where issues of common regulatory concern may arise.
- 125 The MoU is without prejudice to the respective competences of the Member States of the European Union and the Union institutions, including the European External Action Service, and does not create legal obligations with respect to the European Union and its Member States, or prevent Member States and their competent authorities from concluding bilateral or multilateral arrangements with FERC.
- 126 With regard to the terms of cooperation, the Agency and FERC acknowledge that cooperation would be primarily achieved through on-going, informal, oral consultations, and supplemented by more in-depth, ad hoc cooperation. The provisions of the MoU are intended to support such informal and oral communication as well as to facilitate the written exchange of non-public information where necessary.

3 The Agency's Market Monitoring and Coordination Activities under REMIT

3.1 Introduction

- ¹²⁷ REMIT introduced the explicit prohibitions of market manipulation, attempted market manipulation and insider trading, which took effect immediately as of when the regulation entered into force on 28 December 2011.³
- ¹²⁸ It also established (Article 7 of REMIT) that the Agency shall carry out the monitoring of wholesale energy markets in order to detect and prevent trading based on inside information and market manipulation.
- ¹²⁹ In 2014, the Agency's main activities were concentrated on the implementation of the Agency's REMIT Information System. At the same time, the Agency was already active in monitoring the trading activities at pan-European level, based on the limited information available, and its actions were complemented by NRAs' monitoring activities at national or regional level. Furthermore, Persons Professionally Arranging Transactions (PPATs) were continuing with the identification and notification of potential breaches of the market abuse prohibitions as obliged under Article 15 of REMIT.
- ¹³⁰ According to Article 16 of REMIT, the Agency shall also aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. For that purpose, the Agency can publish non-binding guidance, and on the basis of initial assessments or analysis, it can request NRAs to submit information related to the suspected breaches, to commence an investigation, and to take appropriate action to remedy any breach found. Whenever it considers that the possible breach is having, or has had, a cross-border impact, the Agency can establish and coordinate an investigatory group, consisting of representatives of the NRAs concerned. In 2014, the Agency was already active in performing several tasks anticipated in Article 16 of REMIT.

³ Market participants are also under the obligation to publish inside information, and to notify the Agency, the relevant NRA(s) and the competent authority of any delay in such a publication.

3.2 Guidance to NRAs on the Application of REMIT

3.2.1 ACER Guidance to NRAs on the Application of REMIT and Recent Developments

¹³¹ Article 16(1) of REMIT obliges the Agency to publish non-binding Guidance on the application of REMIT, as a way of encouraging NRAs to carry out their tasks under REMIT in a coordinated and consistent way.

¹³² The third edition of the ACER Guidance to NRAs on the application of REMIT was published by the Agency on 7 November 2013. This is currently the latest edition. In the course of 2014, the Agency started to further elaborate specific areas of the Guidance with potential impact on market monitoring and coordination.

Delimitation of the Concept of PPAT

¹³³ Since the notion of a PPAT is not explicitly defined in REMIT, in 2014, the Agency cooperated with NRAs in order to provide some further clarifications around this concept.

¹³⁴ According to Article 8(4)(d) of REMIT, it can be concluded that organised market places and trade-matching systems fall under the definition of a PPAT. Furthermore, any other entities engaged in similar activities must be included in the concept.

¹³⁵ However, while the concepts of “organised market place” or “organised market” are defined in Article 2(4) of the Implementing Acts, the concept of “other PPATs” was not explicitly defined in REMIT.

¹³⁶ In order to provide Guidance to NRAs on the application of the PPAT concept, the Agency used the means of cooperation it employs with NRAs to assess the three different elements of the notion of PPAT independently, and defined a set of criteria that should be taken into consideration by NRAs in the application of the concept. The Agency also provided some examples on the application of the concept of a PPAT.

¹³⁷ Based on the cooperation with NRAs, the Agency published a Guidance Note at the beginning of 2015. The Guidance Note is available here: <https://www.acer-remit.eu/portal/public-documentation>.

Inside Information Disclosure

- 138 The third edition of the ACER Guidance to NRAs on the application of REMIT already addressed the criteria that NRAs should take into consideration when assessing the effectiveness and the timeliness of the disclosure of inside information by market participants .
- 139 In addition, Article 10(1) of the Implementing Acts provides a specific legal basis, and establishes further requirements allowing the Agency to efficiently collect disclosed inside information. It stipulates that market participants disclosing inside information on their websites, or service providers disclosing such information on market participants' behalf, shall provide web feeds to enable the Agency to collect such data efficiently.
- 140 Moreover, according to Article 10(2) of the Implementing Acts, when reporting information on transactions and fundamental data, including the reporting of web feeds on the disclosure of inside information, each market participant shall identify itself, or shall be identified by the third party reporting on its behalf, using the ACER registration code, which the market participant received, or the unique market participant code that the market participant provided while registering in accordance with Article 9 of REMIT.
- 141 On this basis, the Agency started in 2014 the preparatory work for the development of further Guidance on the way inside information should be disclosed. The bulk of this Guidance development exercise will take place during 2015, involving consultations with stakeholders via roundtables, and a public consultation.

3.2.2 The Market Monitoring Handbook

- 142 In order to ensure consistency and coordination in the application of REMIT, the Agency decided to work with NRAs with the objective of ensuring that whenever there are overlaps between the Agency's and NRAs' competences, these are managed in an efficient manner, thereby ensuring maximum efficiency in the use of the very scarce resources the Agency and the NRAs are able to devote to REMIT.
- 143 On the basis of the legal framework provided in Articles 7, 13 and 16 of REMIT, the Agency began to further elaborate its market monitoring strategy by developing, together with NRAs, a Market Monitoring Handbook. The purpose of the handbook is to outline the market monitoring processes and structures within the Agency's Market Monitoring Department, and the coordination and cooperation between the Agency and NRAs, as well as between NRAs concerning case investigations. The handbook also provides an overview of the market monitoring processes as regards PPATs. The handbook will not be a public document; it is intended for internal use among concerned parties only.
- 144 The handbook provides a practical framework for cooperation and consultation between the Agency and NRAs, without prejudice to the provisions set out by EU and national legislation. It is a tool in order to improve the required coordination and consistency of monitoring and case handling under REMIT. It complements the MoUs signed between the Agency and different supervisory entities, in particular NRAs.

3.3 The Agency's Market Monitoring Strategy

3.3.1 Introduction

¹⁴⁵ As mentioned above, the Agency shall monitor trading activity in wholesale energy products in order to detect and prevent trading based on inside information and market manipulation.

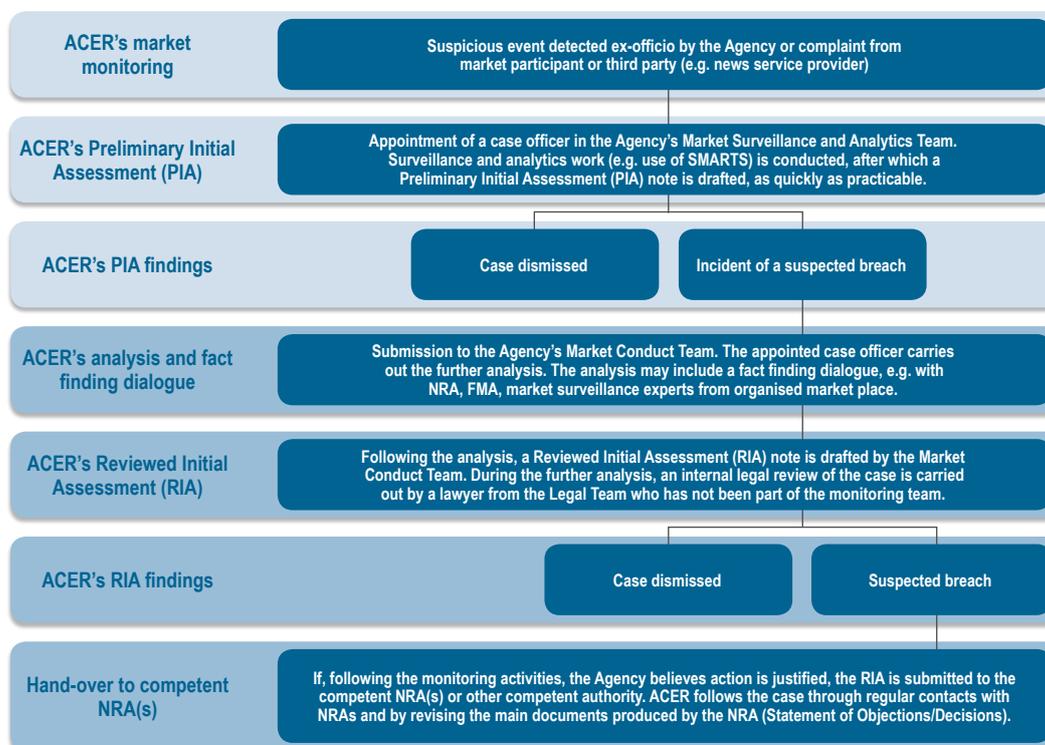
¹⁴⁶ In the absence of data reported directly to the Agency by entities with reporting obligations under REMIT, access to databases and news services, providing a general overview of the performance of major wholesale energy markets, was used. In addition, NRAs and PPATs played a complementary role by monitoring activities at the national and/or regional level.

3.3.2 Market Monitoring Processes

¹⁴⁷ The Agency's procedures for market monitoring depend on the origin of the suspicious event. If the suspicious event is either detected by the Agency (*ex officio*), or reported directly to the Agency by third parties without a notification obligation, the Agency will perform a more in-depth analysis of the event before reporting it to the relevant investigatory authorities. If the suspicious event was notified by an NRA or by a PPAT to the NRA, the Agency will have a more passive role and will be mostly involved in the follow-up of the case in close contact with the relevant NRA(s).

¹⁴⁸ Figure 9 summarises the actions taken by the Agency in *ex officio* cases, or cases reported directly to the Agency by third parties without a notification obligation.

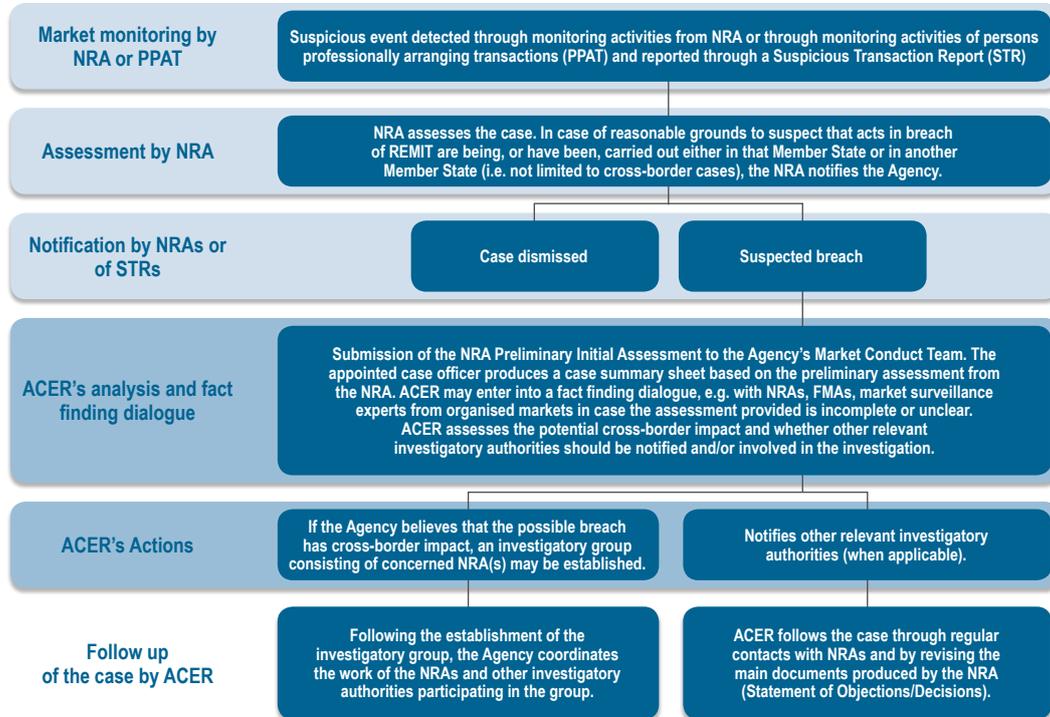
Figure 9: ACER's Approach to Market Monitoring – *Ex officio* and Complaint Cases



- 149 In *ex officio* cases, and when a suspicious event is brought to the Agency's attention through a complaint from a market participant or third party, the Agency's Market Surveillance and Analytics Team will carry out a Preliminary Initial Assessment (PIA), and the Market Conduct Team will do a more in-depth review, involving the relevant authorities as necessary.
- 150 The monitoring activities may include a fact-finding dialogue, e.g. with NRAs, national financial market authorities or market surveillance experts from organised market places. Whenever necessary, the Agency will collect as much background information as possible on the specific market, market participant characteristics and trading behaviour. The Agency may request information under Article 16(4)(a) of REMIT, or create a cross-border investigatory group under Article 16(4)(c) of REMIT at this stage.
- 151 During this further analysis, an internal legal review of the case is carried out and presented in a Reviewed Initial Assessment (RIA). On the basis of the findings, 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(s), together with the relevant documentation regarding the suspected breach. If the Agency believes that the possible breach has cross-border impact, then an investigatory group consisting of concerned NRAs may be established.
- 152 According to Article 16(2) of REMIT, NRAs are obliged to inform the Agency without delay, in as specific a manner as possible, if they have reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out, either within that or 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.
- 153 In addition to NRAs, according to Article 16(3)(c) of REMIT, the competent financial market authority of a Member State also has a notification obligation towards the Agency and ESMA. The notification obligation applies when the competent financial market authority 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 within wholesale energy markets in another Member State. In addition, according to Article 15 of REMIT, PPATs arranging transactions in wholesale energy products, who reasonably suspect that a transaction might breach Articles 3 or 5 of REMIT, shall notify the competent NRA(s) without further delay.
- 154 In order to facilitate cooperation with all parties, the Agency has developed an online Notification Platform, available on the REMIT Portal, primarily to be used by PPATs in order to submit a Suspicious Transaction Report (STR). Through the STR, the relevant NRA and the Agency are simultaneously notified about the suspicious event. Hence, through the STR, the obligation for PPATs to notify the competent NRA(s) of suspicious events, and the obligation on the competent NRA(s) to notify the Agency, are simultaneously fulfilled.

155 Figure 10 summarises the actions taken by the Agency in *non-ex officio* cases.

Figure 10: ACER's Approach to Market Monitoring – Notification from NRAs and STR Cases



Box 2: ACER's Revised Notification Platform

Since 2011, the Agency provided an IT platform on its website for the reporting of suspicious events, which suggest potential breaches of REMIT. In 2014, the platform was redesigned in order to provide PPATs, and other parties wishing to notify of potential suspicious events, a more user-friendly environment. Another driving force for the renewal of the platform was the need to accommodate the changes resulting from the expected adoption of the European Commission's Implementing Acts.

The revised Notification Platform went live on 1 August 2014 on the REMIT Portal (here is the link: <https://www.acer-remit.eu/np/home>).

The updated platform makes it possible for users to notify several NRAs at the same time, as well as the Agency, while using only one notification form. The new platform also allows for notifications from third parties, without a REMIT obligation, to report suspicious transactions (in particular, this relates to notifications from 'whistleblowers'). In such cases, users should select the option "Others" within the Notification Platform, and fill in the forms regarding the type of breach, the description thereof, and the reasons for suspecting a breach, as well as selecting the NRA(s) to which they intend to report. If they wish to remain anonymous, they can opt not to fill in the information identifying themselves on the Notification Platform (see example below).

Since the launch of the new platform, the Agency has observed a significant increase in its use.

The following screenshot illustrates the STR form on the new Notification Platform:

NOTIFICATION PLATFORM [Home](#)

ACER
Agency for the Cooperation
of Energy Regulators

Suspicious Transaction Reporting (STR) according to Articles 15 and 16 of REMIT [How to...](#)

1. Notifying party

- 1.A Person professionally arranging transactions under Article 15 of REMIT
- 1.B NRA under Article 16(2) of REMIT
- 1.C Others

2. Type of breach *

Flag at least one option *

- 2.A Insider trading (Article 3 of REMIT)
- 2.B Market manipulation (Article 5 of REMIT)

3. Details of the person filling the notification

| | |
|--|---|
| Name of the person filling the notification and organization * | E-Mail (to which you will receive the E-Mail Receipt) * |
| <input type="text"/> | <input type="text"/> |
| Address * | Retype E-mail: * |
| <input type="text"/> | <input type="text"/> |
| ACER Code | Role of the notifying party |
| <input type="text"/> | <input type="text"/> |
| Phone/Fax * | |
| <input type="text"/> | |

4. Description of the suspicious order(s)/transaction(s)

Please include details of the wholesale energy product (s), the market(s) concerned; the original order's entry date/time, price and size, the times and sizes of the transaction(s); the type and characteristics of the order, etc.

- 156 When a suspicious act, giving reasonable grounds to suspect a breach of REMIT, is detected by an NRA, a financial markets authority, ESMA, a PPAT or any other relevant entity, it should be reported to the Agency (Article 16(2) and (3) of REMIT). Once the Agency receives the notification, it will verify whether the suspicious event reported was also reported to the relevant investigatory authorities. If that is not the case, a Case Summary will be prepared, all relevant investigatory authorities will be identified, and the Agency will notify those entities.⁴
- 157 Together with the notification to the relevant authorities, the Agency also grants access to the case information collected so far. The remaining steps for these cases are equivalent to the steps taken in *ex officio* cases. In all cases, the Agency decides, supported by a Reviewed Initial Assessment (RIA), whether the case should be dismissed at this stage or if the case should proceed to a formal investigation. If the Agency decides to take the case forward to a formal investigation, then the case's cross-border impact is assessed. If there appears to be a relevant cross-border impact, then the Agency may decide to create a cross-border investigatory group (Article 16(4)(c) of REMIT). Otherwise, if it has not already done so, the Agency requests that the NRA opens an investigation (Article 16 (4)(b) of REMIT). At this stage, the Agency can decide to notify additional relevant authorities that may not have been notified before (Article 16(3)(b) of REMIT).⁵

3.3.3 Market Monitoring Activities

- 158 Typically, market monitoring begins with the acquisition of trade data, fundamental data and inside information, and then proceeds with automatic screening in order to identify "anomalous events". After the identified anomalous events are verified against data quality checks, the Agency decides whether to dismiss or report them.
- 159 No automated screening of data for the purpose of detecting potential breaches of REMIT was in place in 2014, as only the Pilot Project data was available to the Agency on an anonymised basis. However, once the data collection begins in 2015, the automatic screening of the trade data collected by the Agency in order to detect if signals of potential breaches will generate alert messages. Following a check of the accuracy of the alerts, the Agency may begin a fact-finding dialogue with the NRAs, financial market authorities or market surveillance experts from organised market places. The regional surveillance groups and NRAs may be consulted at this stage, and a coordinated approach will be developed.
- 160 The Agency's fact-finding exercise will lead to the production of a PIA. This assessment includes the necessary information to make a decision on whether further scrutiny is needed.
- 161 The monitoring activity also comprises the continuous revision and improvement of the alerts used. However, this part of the monitoring activity will only be performed once the data collection exercise starts in 2015. The Agency's activities in 2014 were mainly focused on developing the original alerts, as explained in sub-section 2.5.2 above.
- 162 In 2014, the Agency performed some manual screening of the data and information in databases to which access had been acquired for the purpose of screening specific behaviours highlighted by diverse sources of information. Selected notifications to the Agency of any delay in the publication of inside information from market participants were also scrutinised.
- 163 The aim of the monitoring conducted in 2014 was to identify and develop a view on the trading behaviour that may constitute a breach of REMIT, and which therefore needs to be referred to the relevant investigatory authorities.

4 The identification of the relevant authorities is dependent on the information on hand at that stage. It may be that, through the fact-finding exercise, other relevant authorities may be identified and, when necessary, notified.

5 In principle, the case notification was already done before. However, through the fact-finding process, the Agency may find that it is necessary to notify other entities as the evidence may unveil potential breaches of different REMIT Articles or breaches of the Market Abuse Regulation (MAR).

3.4 Case Overview

3.4.1 Introduction

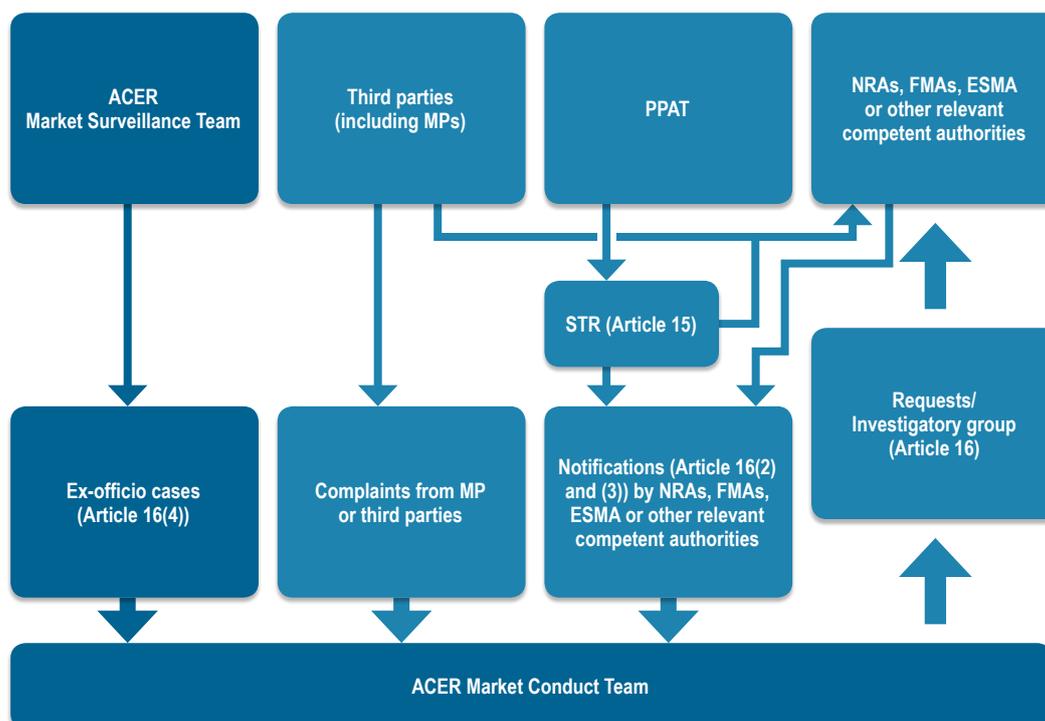
¹⁶⁴ Taking into account the fact that the data collection under Article 8 of REMIT did not take place in 2014, the Agency relied on notifications of suspected breaches of REMIT from NRAs, PPATs, market participants, as well as on public sources for its market monitoring activities.

¹⁶⁵ In 2014, the Agency reviewed suspicious events detected by:

1. NRAs or other relevant authorities through notifications (Article 16(2) and (3) of REMIT);
2. PPATs under the obligation of Article 15 of REMIT; and
3. third parties providing STRs directly through the Notification Platform or the Agency's relevant functional mailbox.

¹⁶⁶ The main sources of cases are explained in the figure below:

Figure 11: Sources of Cases



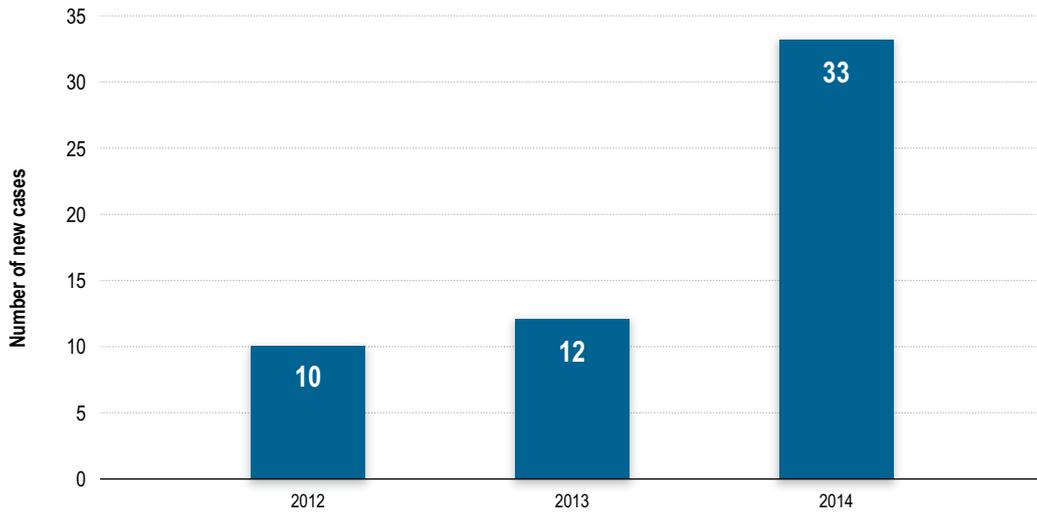
¹⁶⁷ Whilst NRAs or other relevant authorities are in charge of the investigation and enforcement of suspicious cases according to their national law, the Agency has to ensure that the monitoring, investigations and enforcement is coordinated and consistent. For that purpose, the Agency maintains regular contact with the relevant investigatory authorities in order to understand the steps taken and the progress made. The Agency also promotes best practices among the NRAs.

¹⁶⁸ The following section provides a brief presentation of the case reviews concerning potential breaches of REMIT that were taken up by the Agency in 2014. In general, the Agency's policy is not to comment on its case reviews. However, the Agency does provide the following statistics and illustrative examples on case reviews as well as cases closed with or without sanctions.

3.4.2 Statistics on Case Reviews

¹⁶⁹ As the REMIT implementation progressed, the number of new cases reported to/by the Agency grew significantly in 2014 (from 12 in 2013 to 33 in 2014 - Figure 12).

Figure 12: Number of New Cases Reported to/by the Agency in 2012, 2013 and 2014

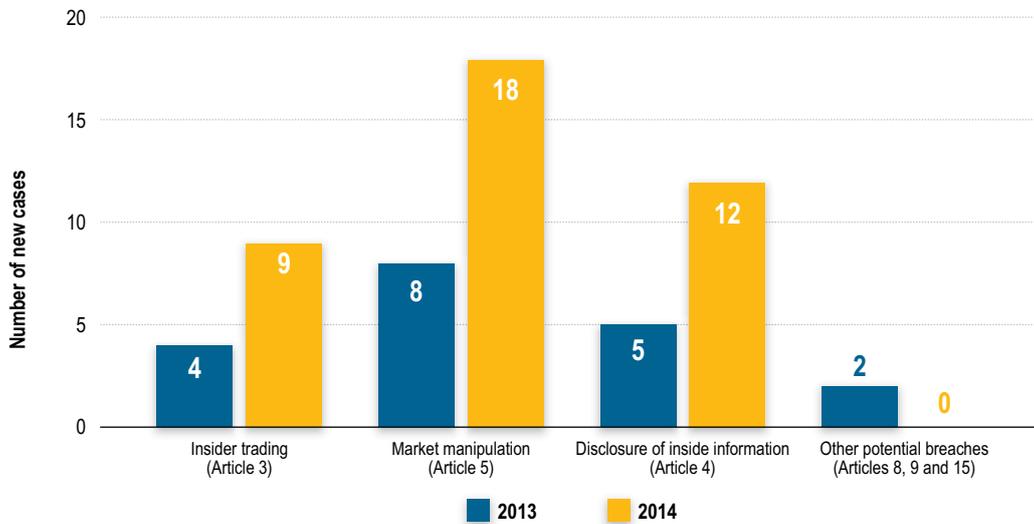


¹⁷⁰ The Agency believes that the number of cases, which it will have to review, will increase in future, in particular following the start of the data collection on the basis of the Implementing Acts.

¹⁷¹ From the 33 new cases reported to/by the Agency in 2014, 18 involved a potential breach of the prohibition to manipulate the markets, 12 a potential breach of the obligation to publish inside information, and 9 a potential breach of the insider trading prohibition (Figure 13).⁶

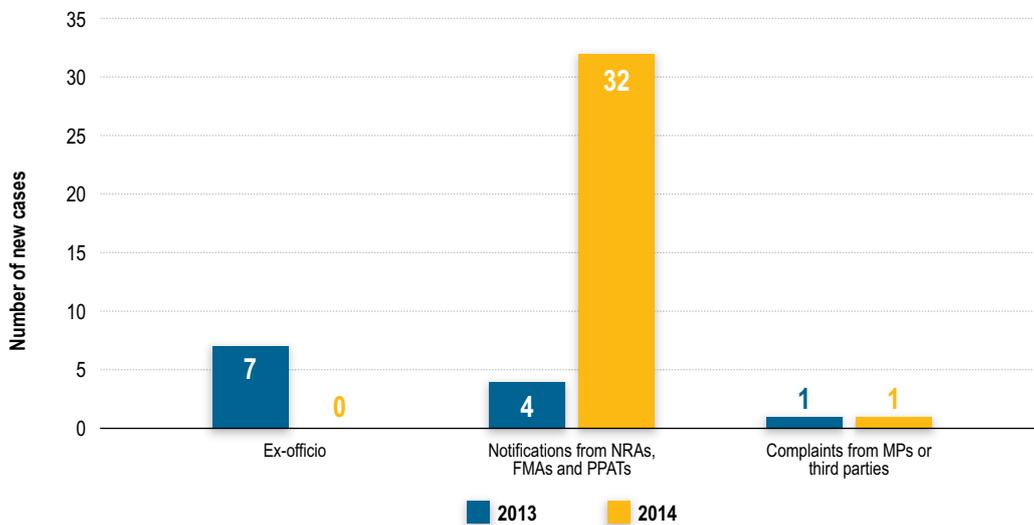
⁶ Of the new cases reported to/by the Agency in 2014, 6 simultaneously included potential breaches of Articles 3 and 4 of REMIT.

Figure 13: Types of Potential Breaches in New Cases Reported to/by the Agency in 2013 and 2014⁷



¹⁷² Most of the cases under review in 2014 were either notified by NRAs or PPATs under the obligations imposed by Articles 16 and 15 of REMIT. Figure 14 gives an overview of the origin of the cases dealt with by the Agency in 2014.

Figure 14: Origin of the New Cases Reported to/by the Agency in 2013 and 2014

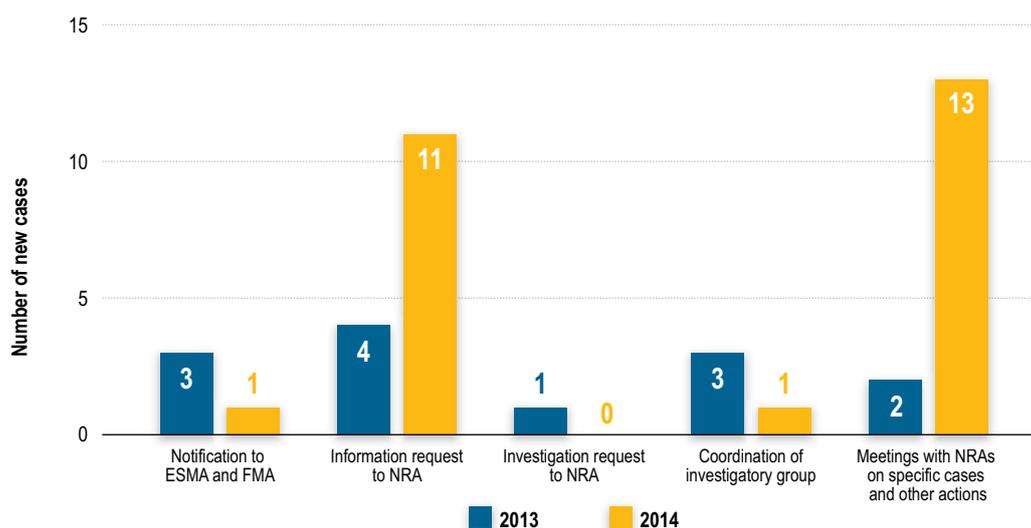


¹⁷³ The Agency aims for greater consistency in the application of the obligations according to Articles 15 and 16 of REMIT. With that objective, in 2014, the Agency promoted several policy initiatives to ensure better consistency in the application of these provisions.

⁷ Some cases include the potential breach of several REMIT provisions.

¹⁷⁴ In 2014, the Agency's review of cases was mainly supported by information from the NRAs and via meetings where the case developments and strategies were discussed. Throughout the year, the Agency sent 11 requests for information to the NRAs, and organised 13 meetings to discuss cases. The Agency also coordinated one investigatory group, and in one instance, notified financial regulators of a potential suspicious breach of the Market Abuse Directive (MAD).

Figure 15: Case Activities by the Agency in 2014 (including activities related to cases opened in previous years)

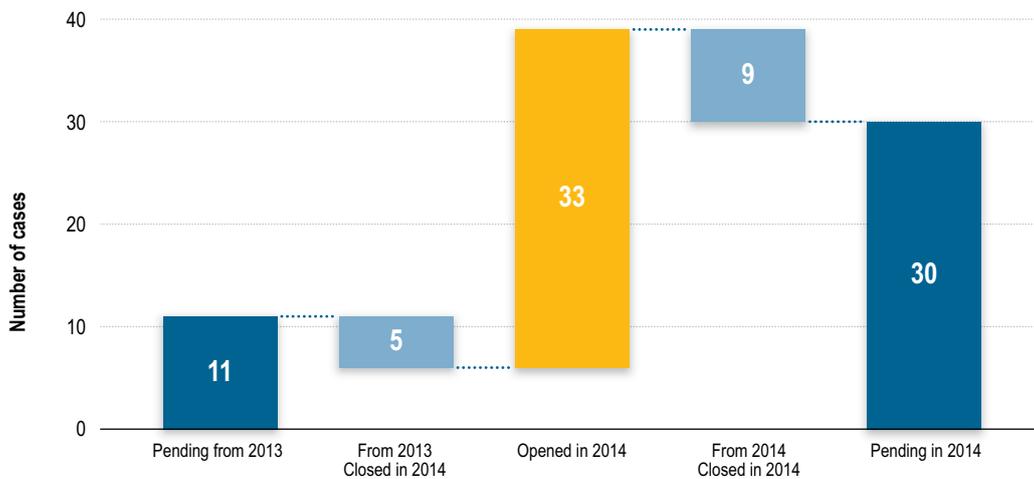


¹⁷⁵ The number of pending cases is also increasing. Out of 12 new cases reported to/by the Agency in 2013, only one was closed in 2013, and the remaining 11 were still pending at the beginning of 2014. As a result, in 2014, a total of 44 cases⁸ of potential breaches of the REMIT provisions were under review by the Agency. By the end of 2014, 14 of these cases were closed, whilst 30 cases were still under review (Figure 16).

¹⁷⁶ Taking into consideration its limitations in terms of resources, the Agency is currently doing a fully fledged review of the cases classified as high priority. For the remaining cases, the Agency takes a more passive approach, making every effort to ensure that the minimum legal requirements are met.

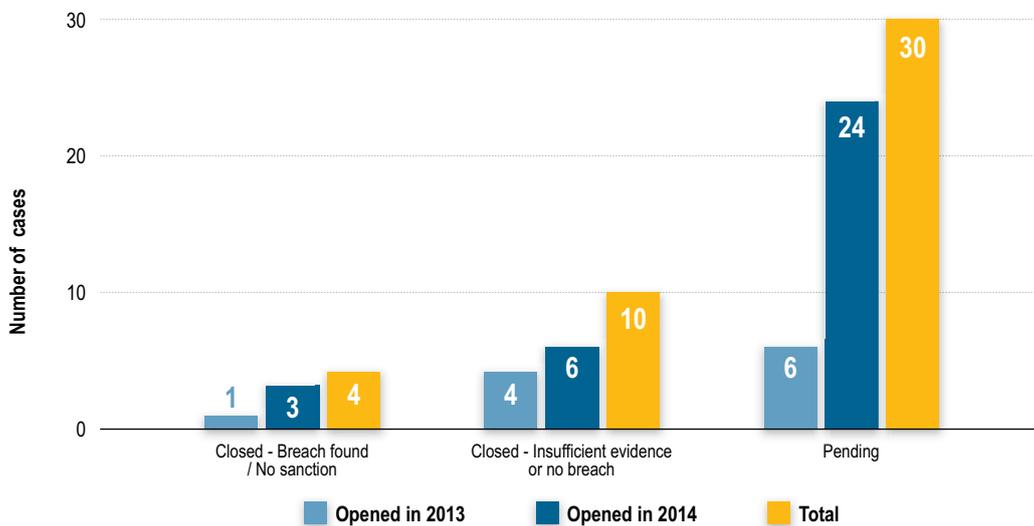
⁸ 33 cases were opened in 2014, and 11 are pending from 2013.

Figure 16: Number of Cases under Review by the Agency at the End of 2014



¹⁷⁷ In 2014, five cases from 2013 and nine cases from 2014 were closed. Out of the 14 cases closed in 2014, the investigatory authority concluded in ten cases that there was insufficient evidence or no breach; in four cases, the breaches were considered proven. The breaches concerned in two cases the prohibition of market manipulation pursuant to Article 5 of REMIT, in one case, the prohibition of insider trading pursuant to Article 3 of REMIT, and in another case, the obligation to disclose inside information pursuant to Article 4 of REMIT. However, no formal sanction was applied as the competent national authority, at the time the breach had occurred, was not yet provided with the necessary enforcement and sanctioning powers, but actions, such as issuances of warnings, were taken (Figure 17).

Figure 17: Status, at the End of 2014, of the Cases under Review by the Agency in 2014



3.4.3 Illustrative Case Examples

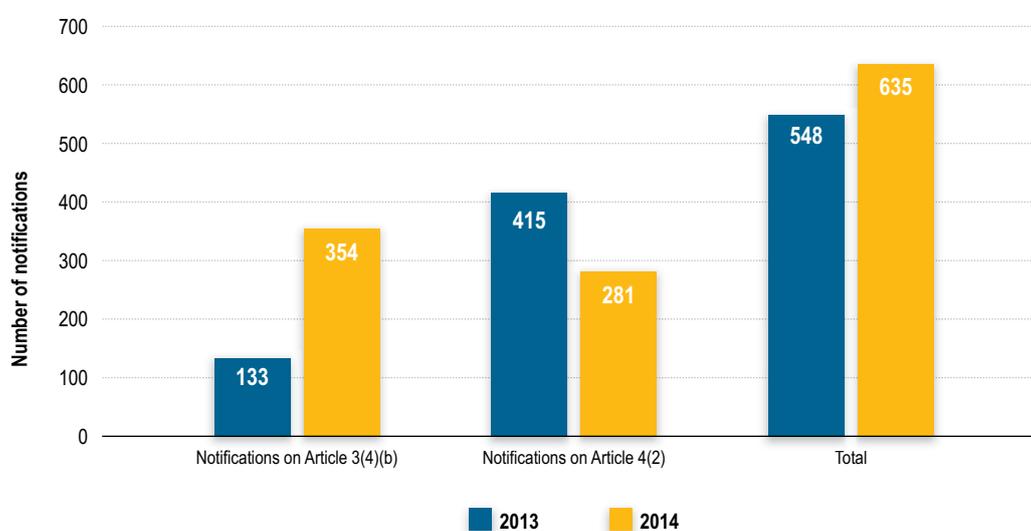
- 178 In a continuing effort to promote transparency while supporting the compliance efforts of market participants, the following illustrations describe selected instances where the Agency's staff undertook a review in 2014. The following information is to provide guidance to the public and to market participants on the reviews undertaken 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.
- 179 **Potential market manipulation in the wholesale electricity market:** In 2014, the Agency and the relevant NRA were notified by an energy exchange on a case potentially involving price manipulation of several wholesale energy products. Identical orders were introduced and withdrawn several times during the day in related products. After evaluating the cross market movements and the fundamental data available, a combination of actions in different markets for the same period could not be proved. Also fundamental information justified some of the withdrawn bids. In particular, a failure in one power station produced chain effects in other power stations owned by different market participants, explaining the amount of bids withdrawn being higher than expected.
- 180 **Potential market manipulation in the wholesale gas market:** A market participant placed an unusual number of orders for an illiquid month-ahead product. In several instances the company acted on both sides (placing bids and asks), which were removed from the market before being executed. Most of the orders were placed during the market closing period and were only upheld during a few minutes. The behaviour created the impression that the market participant was not interested in executing the orders and only intended to affect the closing price of the month-ahead product. The market participant was requested to provide further information on the behaviour and was interviewed by the relevant NRA. The case was closed with a warning from the NRA to the involved market participant, but no sanction was applied as this time the NRA had no sanctioning powers. The market participant committed to change the behaviour in the market.
- 181 **Potential insider trading case:** A market participant had planned maintenance of a power station. The planned maintenance was requested to be postponed by the TSO because of an error in the planning of the maintenance at another power station. Therefore, the company was instructed to continue its production at the original power station. The market participant didn't disclose to the market that the planned maintenance was cancelled, traded while holding this information, and only informed the market about the absence of changes in the capacity made available to the market the next day. The market participant was interrogated by the NRA but as it did not trade unusual amounts in the market while holding this information and as the change in the capacity did not affect the market prices, it was given an oral warning for a lack of care on the market.
- 182 **Disclosure of inside information:** The Agency was notified by an NRA about an investigation regarding a potential breach of Article 4 of REMIT. A market participant was reporting unplanned unavailability of power plants inconsistently and in a way that was not compliant with the guidance established in the ACER Guidance on the application of REMIT. Some IT requirements included in the guidance (RSS feeds, 2 year history) were disregarded, and some content requirements were missing: timestamp of the publication, history of the publications about the same event. The NRA questioned and interviewed the market participant. The market participant committed to implement the required improvements.
- 183 **Obligations of persons professionally arranging transactions:** In the course of a review of a case related to a potential market manipulation in the form of marking the close, the voice records between the trader and the broker that intermediated the orders and transactions unveiled that the broker was aware that the orders introduced were not reflecting the market fundamentals. The Agency shared this evidence with the relevant NRA to verify the PPAT compliance with obligations under Article 15 of REMIT. Based on the evidence collected through an interview with the transaction intermediary, the NRA concluded that there was a potential breach of Article 15 of REMIT. This time the NRA could not sanction, as no sanctioning powers were implemented in the relevant Member State (as defined in Article 18 of REMIT). Nevertheless the intermediary decided to internally develop training for the personnel to ensure full compliance with REMIT obligations.

3.4.4 Notifications of Delayed Disclosure of Inside Information

¹⁸⁴ Since 28 December 2011, in order to assist those market participants who are subject to the obligations in Article 3(4)(b) and Article 4(2) of REMIT⁹, the Agency has developed a standard notification form, based on the experiences of financial markets, and recommended its adoption by all NRAs. The relevant electronic form is available via the REMIT Portal, and can be used by market participants to comply with their notification obligations according to Articles 3(4)(b) and 4(2) of REMIT towards both the Agency and NRAs.

¹⁸⁵ In 2014, the Notification Platform received 354 notifications on Article 3(4)(b) of REMIT, and 281 notifications on Article 4(2) of REMIT.

Figure 18: Breakdown of Notifications Submitted to the Agency in 2014



⁹ Articles 3(4)(b) and 4(2) of REMIT provide exemptions from the obligation to publish inside information in a timely manner, and from the prohibition to trade using this information before it is published in a number of specified cases. In all of these cases, however, the appropriate information should be reported to the Agency and the relevant NRA without delay.

3.5 Assessment of the Operation and Transparency of Different Categories of Market Places and Ways of Trading

3.5.1 Introduction

¹⁸⁶ 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. However, the data available to the Agency at this stage is very limited without data collection on the basis of the Implementing Acts. In addition, the Agency's scarce resources had to be devoted to the implementation of REMIT, and the Agency therefore had limited human resources available to perform such an assessment. This is why this year's assessment is even more limited in scope than in previous years.

¹⁸⁷ In future annual reports on its activities under REMIT, the Agency aims to 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 the data collected under REMIT, but also drawing on experience 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 the transparency and integrity of wholesale energy markets across the Union. However, any such assessments will depend on adequate resources being made available to the Agency by its budgetary authorities in the future.

¹⁸⁸ 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"). Both annual reports will complement and refer to each other where appropriate.

3.5.2 Assessment of the Operation of Different Categories of Market Places and Ways of Trading

¹⁸⁹ The assessment of the operation of different categories of market places and ways of trading could not be provided for this year's annual REMIT report due to the Agency's lack of resources. The Agency will aim to provide such an assessment at least to some extent in the Agency's 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.

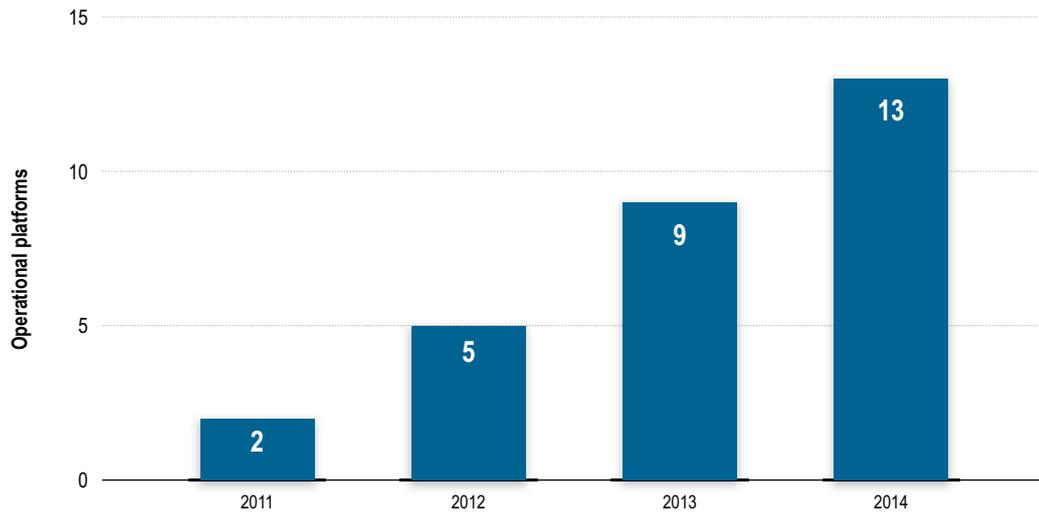
3.5.3 Assessment of the Transparency of Different Categories of Market Places

- ¹⁹⁰ Transparency of information is crucial in the creation of well-functioning, competitive and efficient wholesale energy markets. It facilitates price formation by enabling users to compare trading opportunities and results across trading venues, and thus allowing them to make rational trading decisions about when and where to trade.
- ¹⁹¹ The aim of REMIT is to promote confidence in wholesale electricity and gas markets, so that they are working properly and for the benefit of energy consumers. In particular, Article 4 of REMIT aims to increase transparency in wholesale energy markets by setting out an obligation for market participants to publish inside information in an effective and timely manner.
- ¹⁹² Further clarification as well as an outline of the requirements for the effective and timely disclosure of inside information are provided in the third edition of the non-binding ACER Guidance on the application of REMIT¹⁰. In the Guidance, it is acknowledged that the disclosure of inside information by means of platforms is the most effective way, as it makes it easier for all stakeholders to access this information. At the same time, the use of such platforms may decrease the administrative burden of the market participants who are disclosing inside information.
- ¹⁹³ However, for an interim period, a dual approach has been taken by the Agency with regard to disclosure mechanisms. If platforms for the disclosure of inside information existed, for instance operated by a Transmission System Operator (TSO) or energy exchange, market participants would prefer such disclosure mechanisms. In Member States where such platforms do not exist, market participants normally publish their inside information on their company websites.
- ¹⁹⁴ Additionally, in some markets, news service providers (such as Platts, Reuters and Montel etc.) have established services further disseminating the inside information that market participants have disclosed on their websites or on platforms. These services contribute to the effective disclosure of inside information, and enhance transparency within the markets.
- ¹⁹⁵ In general, inside information should be disclosed in a manner ensuring that it is possible to disseminate it to as wide a public as possible. Inside information is normally disseminated in the form of Urgent Market Messages (UMMs), and according to Article 10(1) of the Implementing Acts, market participants disclosing inside information on their websites, or service providers disclosing such information on market participants' behalf, shall provide web feeds to enable the Agency to collect such data efficiently.
- ¹⁹⁶ The improvement of transparency through the effective disclosure of inside information will remain a key priority for the Agency in 2015 and beyond. In this context, the Agency decided to publish a list of platforms for the disclosure of inside information for wholesale electricity and gas markets, available across the EU, on the REMIT Portal in January 2015.

¹⁰ 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, 3rd Edition, 29/10/2013, is available here: <https://www.acer-remit.eu/portal/acer-documents>.

¹⁹⁷ The following figure presents the evolution of the total number of operational platforms for the disclosure of inside information, for both electricity and gas markets, over the past four years:

Figure 19: Number of Operational Platforms for the Disclosure of Inside Information that the Agency is Aware of, Presented per Year



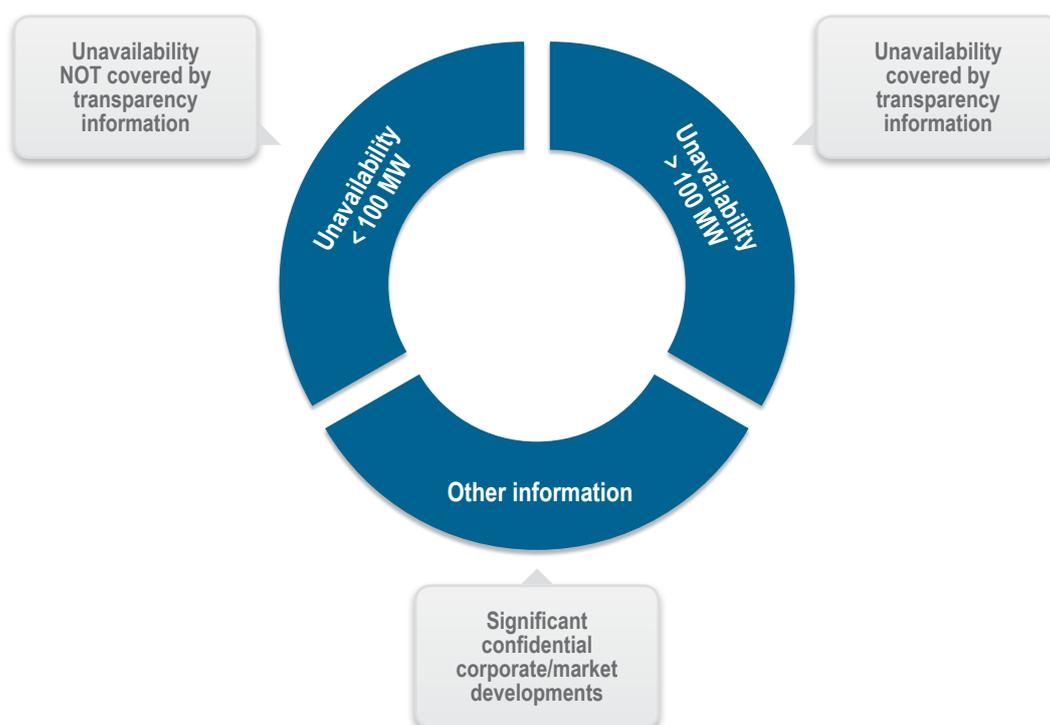
¹⁹⁸ The graph shows a strong upward trend. The number of operational platforms for the disclosure of inside information has almost doubled from 2012 to 2013, and has increased by more than 40 per cent in 2014. The rapid expansion of the number of existing platforms for the disclosure of inside information in Europe helps to increase the level of transparency within wholesale energy markets for the benefit of market participants, and ultimately, of all consumers.

3.5.3.1 Wholesale Electricity Markets

¹⁹⁹ The Transparency Regulations¹¹ for electricity set out the transparency requirements under which market participants are obliged to publish data on a central information platform. On the one hand, the information published on the Transparency Platform of the European Network of Transmission System Operators for Electricity (ENTSO-E) covers a wide area ranging from unavailabilities, demand information, actual and forecast generation, as well as flows in and out of the system. On the other hand, inside information usually relates to unavailabilities of storage, consumption, transmission, generation or production units, and represents, in this sense, a sub-set of data which must be reported under the Transparency Regulations.

²⁰⁰ The Transparency Regulations require the reporting of unavailabilities of 100 MW or more, while changes (of any size) in the capacity or output may constitute inside information if they meet the criteria outlined in Article 2(1) of REMIT. Moreover, according to the ACER Guidance on the application of REMIT, the concept of inside information also includes other information that, most likely, a reasonable market participant would use as part of the basis for its decisions, if it would be likely that this information would have a significant effect on the prices of wholesale energy products.

Figure 20: Types of Information that May Comprise Inside Information



²⁰¹ Hence, the concepts of the transparency of information under the Transparency Regulations, and inside information under REMIT, although different, are interlinked. For that reason, some platforms for the disclosure of inside information have taken on the task of reporting, under an agreement with the market participant and the responsible TSO, unavailabilities according to the Transparency Regulations to the ENTSO-E platform, in addition to publishing UMMs for REMIT purposes.

²⁰² At present, the Agency is aware of eight platforms for the disclosure of inside information for electricity in various Member States of the Union.

¹¹ The Transparency Regulations consist of Regulation EC No 714/2009 of 13 July 2009 of the European Parliament and the Council on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation EC No 1228/2003, as well as of Regulation (EC) No 543/2013 of 14 June 2013 on the submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009.

Box 3: Overview of Current Platforms for the Disclosure of Inside Information for Wholesale Electricity Markets

NPS (Nord Pool Spot) operates a platform for the disclosure of inside information helping users to quickly and simply comply with both REMIT and the Transparency Regulations. It publishes inside information for Nordic and Baltic countries. A large part of the UMMs are directly linked to changes in capacity, while any other information is covered by the market messages. The NPS website provides web feeds and allows the exporting of messages into excel files. NPS offers a possibility to submit data directly from the UMM system to the ENTSO-E Transparency Platform.

EEX (European Energy Exchange) collects and publishes inside information (unavailabilities and market information in the form of an ad hoc ticker) for six Member States, as well as for Switzerland, on behalf of market participants. Unavailabilities related to electricity production, consumption and storage are displayed. In the new website launched in September 2014, companies can request EEX to forward power production data according to the Transparency Regulations to ENTSO-E.

RTE (Réseau de transport d'électricité) publishes data received from producers and related to unavailabilities of production units and generation units located in Metropolitan France (excluding Corsica). Information is published for planned and unplanned outages of more than 100 MW for generation units and for more than 200 MW for production units, as well as changes of 100 MW or more in actual availability of a generation or a production unit, expected or planned to last for at least one hour. Additional information, complementary to the availability information published on a regular basis, is provided on a separate web page with the aim of helping market participants to better assess the overall supply situation.

HUPX (Hungarian Power Exchange) provides a website which allows for the disclosure of inside information according to its publication rules approved by the Hungarian Energy and Public Utility Regulatory Authority. Inside information is split into two main categories: one is related to (un)availabilities (outages or losses of capacity and use of facilities for the production, storage, consumption or transmission of electricity), the other includes all other market information with a potentially significant effect on prices such as changes of market orientation or bankruptcy proceedings.

GPI (Exchange Information Platform) has been established by the Polish Power Exchange to construct a single platform for the disclosure of inside information on a national level. It allows information to be aggregated on planned and unplanned outages in one place and provides information on current and future available production capacity. The reported information on capacity outages is graphically presented in a calendar and aggregated by totalling all outages for any single day.

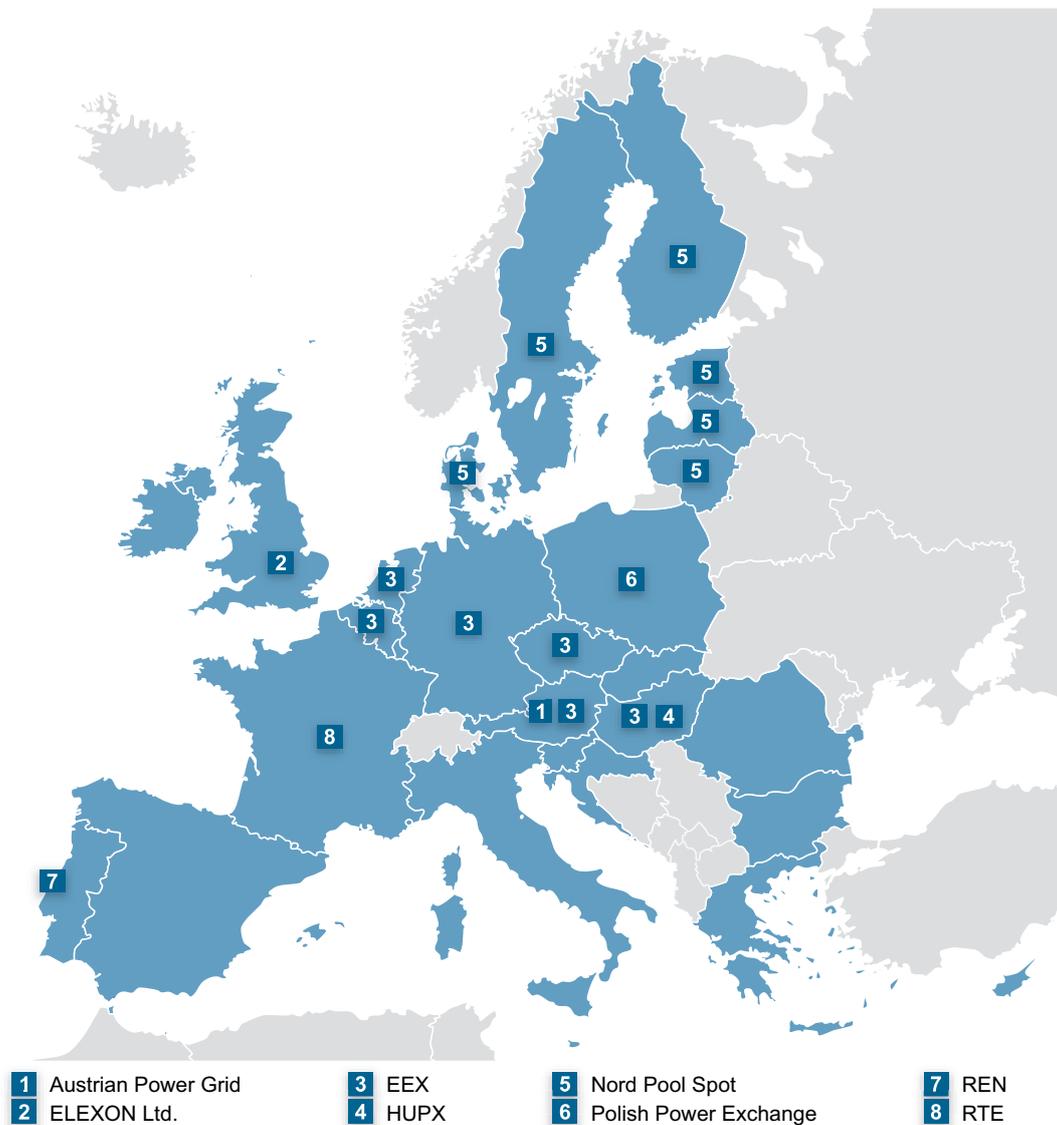
REN (Redes Energéticas Nacionales) provides a platform for the disclosure of inside information, publishing information messages related to unavailabilities of production and transmission of electricity. REN guarantees the delivery of the information published on its platform to the ENTSO-E Transparency Platform. Whereas some of the headings are in English, the current version of the website only displays market messages in the original language.

ELEXON operates a web portal which enables market participants to submit inside information under REMIT. Information messages are published relating to incidents such as planned or unplanned outages and other market information which may have an effect on energy prices.

APG (Austrian Power Grid) provides a platform that fulfils the obligation of inside information publication under REMIT. It is operated by the Austrian TSO APG and is the only platform for the disclosure of inside information dedicated to cross-border transmission unavailabilities. The published market information concerns intraday-stops and transmission capacity changes at national borders. The website has web feeds and delivers the relevant market information to the ENTSO-E Transparency Platform, according to the Transparency Regulations.

203 The following figure illustrates the platforms for the disclosure of inside information for electricity that were in operation in 2014, by the geographical coverage of their services:

Figure 21: Countries Covered by Platforms for the Disclosure of Inside Information in Electricity Markets in 2014 that the Agency is aware of



204 The map provides an overview of the countries where platforms for the disclosure of inside information offer services. In 2014, 16 countries out of 28 were covered by platforms for the disclosure of inside information related to the electricity markets, and in some cases, one single country was covered by multiple platforms. For example, an outage in Hungary may be reported either to the platform operated by EEX or to the one operated by HUPX. There has been an increase in the coverage of the platforms in comparison with the previous year, and this is due both to the launch of two new platforms at the end of 2014, and to the expansion of two existing platforms.

3.5.3.2 Wholesale Gas Markets

- ²⁰⁵ The Third Energy Package also introduced transparency rules¹² for the European gas market. Regulation (EC) No 715/2009 and its amendments require the European Network of Transmission System Operators for Gas (ENTSOG) to provide a union-wide platform where all TSOs for gas shall make their relevant data publicly available. ENTSOG provides the tool for the disclosure of inside information on its transparency platform. UMMs are displayed via a calendar view. The service is currently used by TSOs on a voluntary basis.
- ²⁰⁶ At present, the Agency is aware of seven platforms for the disclosure of inside information for gas in various Member States of the Union.

¹² Regulation (EC) No 715/2009 of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005.

Box 4: Overview of Current Platforms for the Disclosure of Inside Information for Wholesale Gas Markets

Energinet.dk provides an information platform that is a fast and simple way to publicly disclose inside information and other gas market messages related to the Danish natural gas market. UMMs contain information that is relevant to the capacity and use of facilities for the production, storage, consumption or transmission of natural gas. Other gas market messages include information on commercial relevance to market participants in general, e.g. information on mergers and acquisitions.

National Grid's platform provides a facility for market participants to disclose inside information under REMIT on a single website, and facilitates the receipt of live updates on new notifications via email and Twitter. In addition, the page displays a list of market participants' own external websites that provide inside information notifications.

CEGH (Central European Gas Hub)'s platform allows for the publication of inside information according to Article 4(1) of REMIT. It is endorsed by E-Control Austria, and is intended to offer a service for the publication of inside information by market participants in Central and Eastern Europe in an effective and timely manner. At the time of writing, the publications available on the website only concern the Austrian gas market. The platform provides a web feed, and CEGH states that the platform is under continuous adaptation and new functionalities are added in order to respond to market needs. The service is, for the time being, provided free of charge.

EEX (European Energy Exchange) - in addition to the electricity platform for the disclosure of inside information, the EEX website also allows market participants to disclose inside information related to natural gas consumption in three categories (capacity, usage and availability) and covers three countries: Germany, Austria and the Czech Republic.

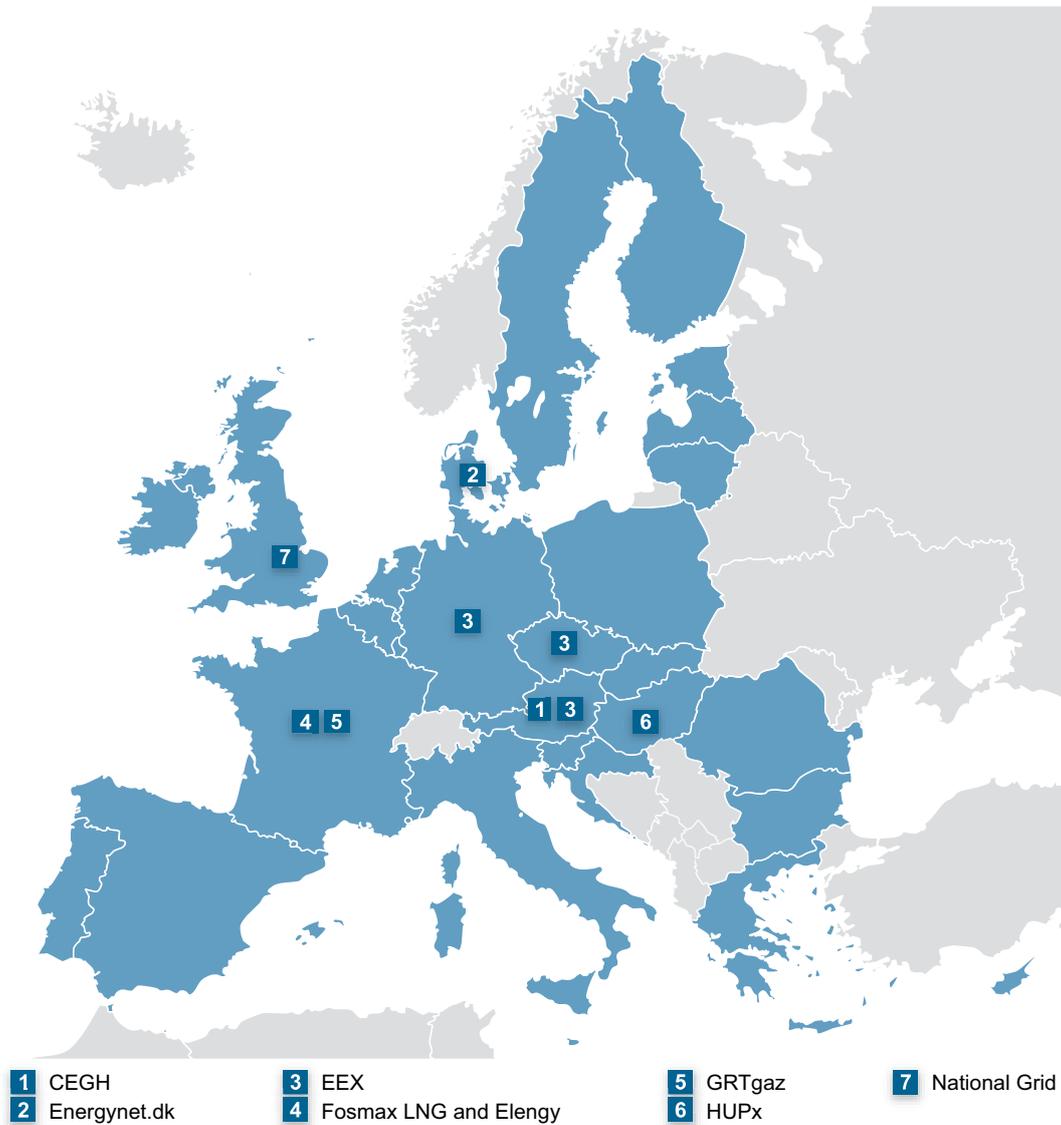
The HUPX (Hungarian Power Exchange) platform is available for the disclosure of inside information for the gas market in parallel with the electricity market. However, the number of gas market messages is much lower compared to the ones directly related to electricity. The ratio is around 1 to 9. Most of the information on the gas market concerns natural gas consumption. There are also messages related to the transport, distribution and storage of gas. HUPX charges an annual contribution which covers the platform's operational and development costs.

GRTgaz's platform for the disclosure of inside information presents a list of publications according to Article 4(1) of REMIT. The platform is operated by the TSO, and the published market messages concern reductions or unavailabilities of transmission capacity and other market information.

Fosmax LNG and Elengy - the French LNG REMIT Central Collection and Publication Platform provides a facility for the disclosure of inside information on the use of LNG terminals by market participants under Article 4(1) of REMIT. At the time of writing, there were no publications available on the platform.

207 The following figure presents a geographical representation of the platforms for the disclosure of inside information for natural gas that were in operation in 2014, and that the Agency is aware of:

Figure 22: Countries Covered by Platforms for Disclosure of Inside Information in Natural Gas Markets in 2014 that the Agency is aware of



208 Similarly to the electricity market, the number of countries covered by platforms increased in 2014 and, by the end of the year, amounted to a total of 7 out of 28 Member States.

3.5.3.3 Platform Comparison

- 209 The significant growth in the coverage of platforms in recent years is welcomed by the Agency, since the use of centralised platforms is an effective tool for the public disclosure of inside information. The use of platforms benefits both those who submit messages and those who want to use this information for their business decisions.
- 210 However, there are large differences across platforms (and company websites) in the way UMMs are published and presented. This may lead to information gaps and a lessening of market transparency. The main differences in the way inside information is disclosed relate to the nomenclature, formats and level of detail used across platforms. Such variance may limit the achievable level of transparency and also make the collection of UMMs from various platforms more challenging.
- 211 Further challenges may arise from the overlap in the ways inside information is published, as information on a single event may be reported via multiple channels making data collection and use challenging. Firstly, the dual approach in the disclosure mechanism, in the form of market participants' own websites, and inside information platforms, may lengthen the search for information. Secondly, there is a partial coincidence between the reporting obligations stemming from the Transparency Regulations and Article 4(1) of REMIT. Lastly, some confusion may arise from the fact that there are some countries which are covered by more than one platform for the disclosure of inside information.
- 212 Under the requirements set out in Article 10 of the Implementing Acts, the use of web feeds on the platforms' websites is mandatory. To date, such feeds are available on three platforms only. However, some of the operational platforms have implemented useful features that may further enhance transparency. This includes, for instance, the possibility of making historic data exportable to Excel as well as detailed filtering options that allow for the easier comparison and analysis of market messages. Other forms of data representation, such as the calendar or GANTT view, are also features that may facilitate the use of UMM data.
- 213 In conclusion, the number of platforms for the disclosure of inside information grew in recent years. However, the coverage is not yet complete as there are still countries without an available platform. The way inside information is presented needs to be further aligned in order to facilitate the use of UMM data and to further increase transparency. For these reasons, the Agency plans to engage with stakeholders in a discussion on how to enhance the consistency of the way inside information is published in 2015, allowing for the development of a common standard for UMMs.

3.6 Stakeholder Involvement

3.6.1 Public Workshops

²¹⁴ The Agency organised four public workshops on REMIT Implementation in 2014. The Agency also started to web stream its public workshops. The last two workshops of the year used this technology.

Figure 23: Public Workshops Organised in 2014

| Date | Location | Main topics |
|-------------|-----------|---|
| 3 March | Ljubljana | The ACER Transaction Reporting User Manual (TRUM) The ACER Requirements for the Registration of Registered Reporting Mechanisms (RRM) and Regulated Information Services (RIS) Latest Developments of CEREMP |
| 3 April | Ljubljana | The ACER Transaction Reporting User Manual (TRUM) The ACER Requirements for the Registration of Registered Reporting Mechanisms (RRM) Regulated Information Services (RIS) Latest Developments of CEREMP |
| 16 July | Ljubljana | The ACER Requirements for the Registration of Registered Reporting Mechanisms (RRM) and Technical Specifications for Data Submission The ACER User Manuals for the Reporting of Trade and Fundamental Data Latest Developments of CEREMP |
| 10 December | Ljubljana | Introduction to the Implementing Acts and the REMIT Implementation Process The ACER Requirements for the Registration of Registered Reporting Mechanisms (RRM) The ACER User Manuals for the Reporting of Trade and Fundamental Data The Way Forward |

²¹⁵ On average, around 100 stakeholders participated in the workshops. In addition, the Agency organised REMIT Pilot Project Meetings on 6 March, 30 July as well as 12 November 2014 in Ljubljana.

²¹⁶ Furthermore, in 2014, the Agency communicated with the public on all REMIT-related matters, including through the participation of Agency representatives as speakers in regional workshops organised by NRAs (for instance, in Copenhagen, Riga, Lisbon and London), in order to raise awareness of REMIT and its obligations and prohibitions among market participants.

3.6.2 Roundtable Meetings

²¹⁷ While preparing for the upcoming Implementing Acts, the Agency started to organise roundtable meetings with interested stakeholders on REMIT implementation in Ljubljana as of September 2013. The purpose of these roundtable meetings is to gather the views of, and obtain information from, the key stakeholders on questions related to the implementation of REMIT, the focus being on data collection.

²¹⁸ In 2014, the Agency organised four roundtables, mainly with organised market places, in order to provide feedback on the TRUM (including XML schemas) and input on data fields for standard contracts. Furthermore, three roundtables were organised with third party RRM in order to provide feedback on the TRUM (including XML schemas), RRM Requirements and technical specifications. Another four roundtables with market participants' associations were also organised in order to provide feedback on the TRUM, in particular on the reporting of non-standard contracts (including XML schemas). Finally, three technical roundtables with reporting entities were organised.

3.6.3 Q&As

219 The Agency published a Q&A paper on REMIT for the first time in December 2011. This paper was updated as required. The aim of the Q&A paper is to provide information to market participants and the wider public on REMIT, the Implementing Acts and their implications.

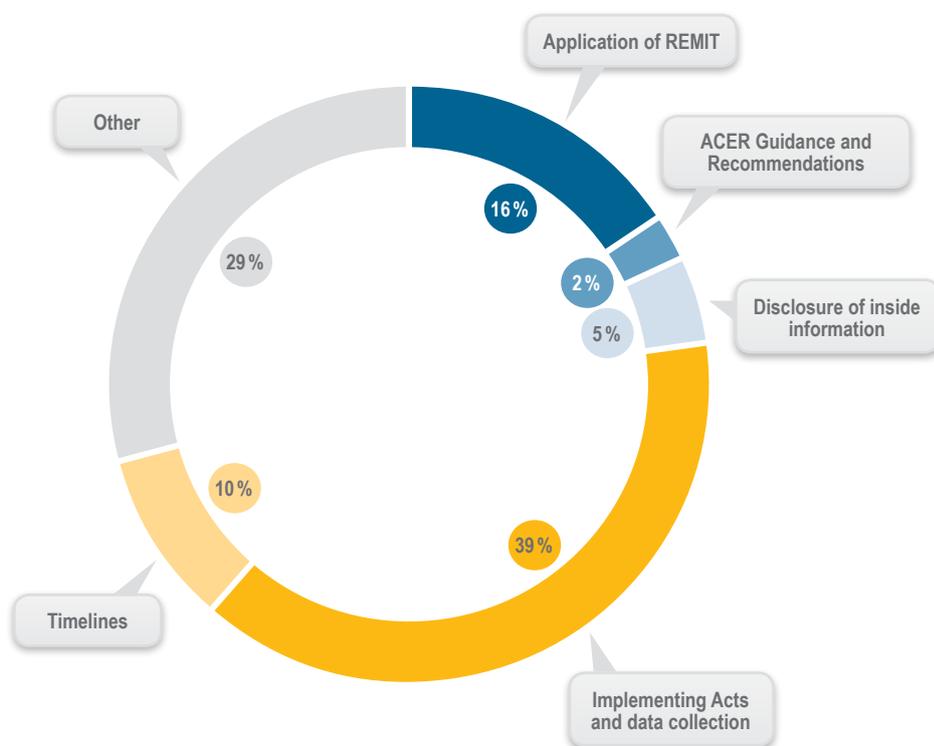
220 In 2014, the Q&A paper was reviewed in order to take into account the Implementing Acts. The paper was divided into four sections: (i) background information on REMIT, (ii) the role of the Agency, (iii) REMIT definitions, obligations and prohibitions for market participants, and (iv) the timeline for implementation. The Agency also provided a form on its website through which stakeholders are able to submit requests for clarification on issues related to the implementation of REMIT. The input received provides the basis of the Agency's Q&A paper, and is also used for updating the ACER Guidance on the application of REMIT. The Q&A paper was further developed ever since.

221 The number of questions received by the Agency increased drastically towards the end of 2014, and during 2015. In order to manage the high influx of questions, the Agency decided to further review the Q&A paper, and to publish an updated version several times per year as of the beginning of 2015.

222 In 2014, the Agency received 83 questions through its functional mailbox, compared to 52 questions in 2013. Figure 24 delineates the topics of the REMIT questions.

223 Questions relating to REMIT can be sent to the Agency's functional mailbox (remit@acer.europa.eu).

Figure 24: Topics of REMIT Questions Raised by Stakeholders in 2014



4 Conclusions and Recommendations

4.1 Conclusions

- 224 Despite a level of resources clearly inadequate to its mandate, which forced the Agency to significantly revise its Work Programme in March 2014 with the deprioritisation of a number of activities, significant progress was made in the Agency's work to implement REMIT.
- 225 The Agency achieved major REMIT implementation milestones in 2014, and will continue its REMIT implementation activities in 2015. It will further enhance its market monitoring and coordination activities in 2015. Efficient and effective market monitoring will, however, depend heavily on the appropriate financial and human resources being made available to the Agency.

4.2 Recommendations

- 226 The Energy Union is one of the 10 priorities of the European Commission for 2015 and beyond. The Communication from the Commission of 25 February 2015 on 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy'¹³ sets out the Commission's strategy to achieve such an Energy Union.
- 227 The internal electricity and gas markets rest on the integration of national markets through market mechanisms, i.e. arrangements (such as "market coupling" in the day-ahead electricity market) which rely on market/price signals in order to determine the flow of energy between the different jurisdictions and across the EU.
- 228 Well-functioning markets also play a crucial role in delivering the security of energy supply. As highlighted by the results of the stress tests on the European gas system conducted by the European Commission in 2014, a cooperative approach to supply disruptions significantly dampens their impact on the most affected areas. Such a cooperative approach should be based, for as long as possible, on market-based mechanisms (and only exceptionally on State interventions) and thus rely on the internal market working properly.
- 229 In both respects, therefore, well-functioning markets are essential for delivering the Energy Union objectives and should work on the basis of reliable price signals, i.e. price signals which reflect the demand and supply fundamentals and are not distorted by market abusive behaviour.
- 230 The effective implementation of REMIT, with its aim of detecting and deterring market abuse, is thus a major pre-requisite for efficient market integration and security of energy supply that are essential components of the Energy Union strategy.
- 231 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 market¹⁴.
- 232 Therefore, against the background of market integrity and transparency and the effective implementation of REMIT as essential components of the Energy Union strategy, the Agency gives the following recommendations to the European Commission pursuant to Article 7(3) of REMIT:

13 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee, the Committee of the Regions and the European Investment Bank 'A Framework Strategy for a Resilient Energy Union with a Forward-Looking Climate Change Policy' (COM(2015) 80 final),

14 According to Article 7(3), second subparagraph, of REMIT, the Agency may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Since the year 2014 was fully dedicated to REMIT implementation and because the Implementing Acts were only adopted in the end of 2014, and also in view of its limited resources, the Agency refrains from evaluating whether any minimum requirements for organised markets could contribute to enhanced market transparency in 2015.

Consider the specificities of energy markets in EU financial market legislation

- 233 The European Commission, the Agency and NRAs have spent considerable resources developing markets which will support efficient risk allocation, dynamic cross-border trade and effective competition. Central to this policy is the development of liquid and efficient wholesale markets for electricity and gas, but also for carbon products. Such markets give businesses the confidence to invest in new generation and infrastructure, which are needed for the security of energy supply.
- 234 The Agency would like to recall that a tailored framework to combat market abuse in energy markets was advocated, in October 2008, in a joint advice to the European Commission from ERGEG, the European Regulators' Group for Electricity and Gas, and CESR, the Committee of European Securities Regulators, the two predecessor organisations of the Agency and ESMA. REMIT was developed as an appropriate legal framework tailored to the energy sector which aims at detecting and deterring market abuse and takes sector-specific conditions into account. Its implementation will only be completed in 2016, following the entry into force of the Implementing Acts earlier this year.
- 235 The Agency is concerned about some recent developments in EU financial markets regulation, such as the revision of EMIR, MAR, MiFID II and the proposal for a benchmark regulation, which seems to neglect the specificities of energy markets and confuse the risk of market abuse with systemic risk. Such developments may put the liquidity and efficiency of wholesale energy markets at risk, thus jeopardising efficient market integration and security of energy supply that are essential components of the Energy Union strategy.
- 236 The Agency's Recommendation No. 1/2015 on physical forwards in wholesale energy markets and the potential classification of certain wholesale energy products as financial instruments should be seen in the light of this concern. In that Recommendation the Agency recommended to the European Commission to clarify in the delegated acts on the specification of Sections C.6 and C.7 of Annex I of MiFID II that
- the 'provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity', and/or 'another method of bringing about the transfer of rights of an ownership nature in relation to the relevant quantity of goods without physically delivering them (including notification, scheduling or nomination to the operator of an energy supply network) that entitles the recipient to the relevant quantity of the goods', as indicated by ESMA's technical advice, suffice to guarantee the physical delivery of the commodity.
 - if a wholesale energy derivative contract traded on an OTF cannot be settled in cash, it must be physically settled and, therefore, it falls outside the scope of Annex I C.6 of MiFID II.
 - a forward contract that must be settled with a physical delivery (and which, therefore, is not a derivative) does not fall under the scope Annex I C.6 of MiFID II
- 237 The Agency stands ready to provide any further assistance on this matter to the European Commission as required.

Monitor the transposition and implementation of enforcement and sanctioning powers at national level

- 238 The full implementation of REMIT to detect and deter market abuse, as a major pre-requisite for efficient market integration and security of energy supply, requires effective enforcement. According to Article 13(1), first subparagraph, of REMIT, NRAs shall ensure that the market abuse prohibitions set out in Articles 3 and 5 of REMIT and the transparency obligation set out in Article 4 of REMIT are applied. At the same time, Article 13(1), second subparagraph, of REMIT requires Member States to ensure that, at least as of 29 June 2013, their NRAs have the necessary investigatory and enforcement powers. In addition, Member States were asked to lay down the rules on penalties applicable to infringements of REMIT, to take all measures necessary to ensure that they are transposed by 29 June 2013. However, the case statistics for 2014 show that in a number of cases potential breaches of REMIT could not be sanctioned due to the fact that NRAs still lacked enforcement and sanctioning powers.
- 239 Furthermore, the Agency is concerned that the transposition of enforcement and sanctioning powers by Member States at national level may be very diverse. Recital 31 of REMIT considers the following: *'It is important that the penalties for breaches of this Regulation are proportionate, effective and dissuasive, and reflect the gravity of the infringements, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation. The application of these penalties should be carried out in accordance with national law. Recognising the interactions between trading in electricity and natural gas derivative products and trading in actual electricity and natural gas, the penalties for breaches of this Regulation should be in line with the penalties adopted by the Member States in implementing Directive 2003/6/EC. Taking account of the consultation on the Commission Communication of 12 December 2010 entitled "Reinforcing sanctioning regimes in the financial services sector", the Commission should consider presenting proposals to harmonise minimum standards for the penalties systems of Member States in an appropriate time-frame. This Regulation affects neither national rules on the standard of proof nor obligations of national regulatory authorities and courts of the Member States to ascertain the relevant facts of a case, provided that such rules and obligations are compatible with general principles of Union law.'*
- 240 Directive 2014/57/EU of 16 April 2014 on criminal sanctions for market abuse (Market Abuse Directive, MAD) establishes minimum rules for criminal sanctions for insider dealing, for unlawful disclosure of inside information and for market manipulation in order to ensure the integrity of financial markets in the Union. It appears that, currently, a similar harmonisation of penalties under REMIT does not apply. This concerns also the lack of harmonisation of penalties beyond market abuse breaches under REMIT: for instance, for breaches of the registration and reporting obligations under Articles 8 and 9 of REMIT. The Agency therefore recommends that the Commission closely monitors the transposition of REMIT at the national level, and takes any necessary action to ensure effective and efficient enforcement and sanctioning by Member States at Union level.
- 241 The Agency is particularly concerned about the potential lack of enforcement powers to ensure the compliance of RRM with the technical and organisational requirements laid down in Article 11 of the Implementing Acts. It therefore invites the European Commission to monitor the implementation of appropriate enforcement powers at national level or to consider enabling the Agency to receive enforcement powers with regard to the supervision of RRM.

Provision of appropriate financial and human resources to the Agency

- 242 Finally, the full and effective implementation of REMIT requires that the Agency is provided with the appropriate financial and human resources. The Agency has already repeatedly reminded its budgetary authorities of this basic principle stated in Recital 28 of REMIT: *'The Agency should be provided with the appropriate financial and human resources, in order to adequately fulfil the additional tasks assigned to it under this Regulation'*.
- 243 On the basis of a detailed analysis of the tasks assigned to it by REMIT and of a comparison with the resources devoted to similar tasks in the Federal Energy Regulatory Commission in the US, the Agency has estimated that it requires 45 staff members to effectively implement REMIT and a quest for additional resources has been included in the Agency draft budget every year since 2013. So far, however, no additional human resources were allocated to the Agency, after the first assignment of 15 staff members in 2012 – 2013.
- 244 The Agency would like to propose that fees are introduced for some of the services it provides under REMIT. The financial resources which would result from the fees could then be used to pay for additional required resources. Fees are already charged by some other authorities in Member States, as well as by some EU Agencies¹⁵, carrying out similar regulatory activities, which are consequently partly funded through fees.
- 245 In the case of the Agency, fees could be introduced for the registration of RRM. Article 11 of the Implementing Acts requires the Agency to register reporting parties, as part of the process to ensure their compliance with the technical and organisational requirements to ensure operational reliability of data reporting. In the first half of 2015, the Agency already received more than 400 applications from reporting parties which intend to become RRM. This is already more than twice as much as the number of applications (200 reporting parties in total) expected by the Commission in 2011 and used as one of the references in developing the financial statement for REMIT. And the number of applications can only increase in the near future, given that, for the second phase of reporting, also TSOs, SSOs and LSOs will be required to report fundamental data, and therefore will have to register as RRM.
- 246 Since the registration of the RRM, and their ongoing supervision of compliance with the technical and organisational requirements and responsibilities for reporting data according to Article 11(1) of the Implementing Acts, is decisive for ensuring operational reliability according to Article 12(1) of REMIT, the Agency, given its very limited resources, is currently facing significant difficulties to process the RRM applications within the anticipated timeline of up to three months, and to ensure operational reliability for the operational phase of REMIT. The additional resources requested are therefore essential to ensure that the Agency is able to deal with the RRM applications in a timely manner, while safeguarding operational reliability.
- 247 In view of the current experiences with the registration of reporting parties, it would be conceivable to foresee a registration fee per applicant seeking to register/be registered, as an RRM, and an annual supervisory fee for each RRM. This would contribute to the costs that the approval procedures and systems create for the Agency, and make a proportionate contribution to the costs that arise from the linking with the Agency's REMIT Information System ARIS. It could also contribute to the Agency's supervisory and maintenance costs.
- 248 Similar fees are already applied by ESMA, pursuant to Article 5 of Commission Delegated Regulation (EU) No 1003/2013, for the supervision of trade repositories under EMIR, and by a number of national financial regulatory authorities (e.g. in the UK and Germany) for data collection from Approved Reporting Mechanisms under MiFID. Fees charged for the registration of RRM would also introduce appropriate signals and incentives to promote efficient concentration of reporting through third parties and competition between RRM.

¹⁵ An example of a fee charging Agency is ESMA which is partly funded by fees charged to trade repositories, recovering their supervisory costs in full according to Commission Delegated Regulation (EU) No 1003/2013. The same applies for most national financial regulatory authorities for data collection under Directive 2004/39/EC (MiFID).

- ²⁴⁹ The Agency therefore recommends that the Commission considers the introduction of fees to be charged by the Agency in respect to its trade data collection activities. This would require a modification of Regulation (EC) No 713/2009, in the same manner as the one introduced by Article 20 of Regulation (EU) 347/2013.
- ²⁵⁰ Since the legislative implementation of such a solution would require time, it does not alter the Agency's current requests for financial and human resources from the EU Budget, in order to adequately fulfil the tasks assigned to it under REMIT. However, once implemented, it could provide a significant contribution to the Agency's budget, thus alleviating the financial burden on the Union.

4.3 Outlook and way forward

²⁵¹ The implementation of REMIT is still ongoing and will continue in 2015 and beyond. The 2015 Agency Work Programme anticipated the following deliverables in the area of REMIT implementation and operation:

- Operation, further development and, if necessary, enhancements of the Centralised European Register of Energy Market Participants (CEREMP), of ARIS for collection of trade, fundamental and other data and for the data sharing with NRAs, in connection with the Implementing Acts.
- Market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation according to Article 7 of REMIT, in cooperation with NRAs, on the basis of data collected in accordance with the Implementing Acts, and establishment, further development and operation of the Agency's market surveillance solution to perform its market monitoring activities.
- Coordination of NRAs and other relevant authorities, including at the regional level, without prejudice to their responsibilities, aiming to promote best practices for the implementation of REMIT and to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way, including the update of the Agency's Guidance on the application of REMIT, and coordination of NRAs' investigation activities on cross-border market abuse instances.
- Cooperation with NRAs, ESMA, competent national financial market authorities and other authorities, and with supervisory authorities, international organisations and the administrations of third countries, with the aim of ensuring that a coordinated approach is taken to the enforcement of market abuse rules where actions relate to one or more wholesale energy products which are financial instruments to which Article 9 of Directive 2003/6/EC applies and also to one or more wholesale energy products to which Articles 3, 4 and 5 of REMIT apply according to Article 1(3) of REMIT.
- Annual report on the Agency's activities under REMIT according to Article 7(3) of REMIT.

²⁵² This Work Programme was developed on the basis of the Agency's draft Budget for 2015, adopted by the Administrative Board in March 2014 with a supportive opinion by the Board of Regulators, which included the additional staffing required for the full implementation of REMIT (and of the TEN-E Regulation). The Work Programme 2015 has been reviewed on the basis of the 2015 EU Budget and therefore the following activities/deliverables were subsequently deprioritised (cancelled, postponed or in part combined with other activities/deliverables listed above):

- Establishment of appropriate mechanisms to access emission allowances data.
- Annual report on the Agency activities under REMIT according to Article 7(3) of REMIT, which may have to be further reduced in content and extent or be completely absorbed in another report of the Agency with lower sights on its level of detail.

²⁵³ The Agency will then also reassess the scale of its market monitoring of wholesale energy markets to detect and prevent trading based on inside information and market manipulation, in cooperation with NRAs, on the basis of the data collected in connection with the Implementing Acts.

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 Internal Energy Market (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 the 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. The monitoring of wholesale energy markets by the Agency shall be based on the timely collection of data relating to the transactions executed and the orders placed on wholesale energy markets in the European Union (trading data), as well as on fundamental data, that is, data relating 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>.

The REMIT Portal is available here: <https://www.acer-remit.eu/portal/home>.

Annex II

List of Abbreviations

| | |
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| 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 |
| CSD | Central Service Desk |
| 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 |
| FMA | Financial Market Authority |
| IT TF | IT Task Force |
| LSO | LNG System Operator |
| MAD | Market Abuse Directive |
| MAR | Market Abuse Regulation |
| MiFID | Directive 2004/39/EC on Markets in Financial Instruments |
| MMG TF | Market Monitoring Governance Task Force |
| MoU | Memorandum of Understanding |
| MTF | Multilateral Trading Facility |
| NRA | National Regulatory Authority |
| OTC | Over The Counter |
| OTF | Organised Trading Facility |
| PPAT | Person Professionally Arranging Transactions |
| PIA | Preliminary Initial Assessment |
| REMIT | Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency |
| RIA | Reviewed Initial Assessment |
| RRM | Registered Reporting Mechanism |
| SSO | Storage System Operator |
| STR | Suspicious Transaction Report |
| TRUM | Transaction Reporting User Manual |
| TSO | Transmission System Operator |
| UMM | Urgent Market Message |
| WMS TF | Wholesale Markets Surveillance Task Force |

Annex III

Additional Information

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List of related documents

- ACER Work Programme 2015, http://www.acer.europa.eu/The_agency/Organisation/Board_of_Appeal/Declarations/ACER%20Work%20Programme%202015%20-%20Revised2015.pdf
- ACER Work Programme 2014, http://www.acer.europa.eu/Official_documents/Publications/Documents/ACER%20Review%20of%20the%202014%20Work%20Programme.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/Media/Pages/3rd%20Edition%20ACER%20Guidance%20REMIT%20%282%29.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/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>
- 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/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF>
- 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/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>
- 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/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:EN:PDF>
- 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/LexUriServ/LexUriServ.do?uri=OJ:L:2013:163:0001:0012:EN:PDF>

- Commission Implementing Regulation (EU) No 1348/2011 of 17 December 2011 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R1348&from=EN>
- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC Text with EEA relevance, <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32014R0596&from=EN>
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