



**Publishing date:** 07/10/2016

**Document title:** REMIT Annual Report 2016

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# ACER

 Agency for the Cooperation  
of Energy Regulators



ACER's annual report  
on its activities under  
REMIT in 2015

# ACER's Annual Report on its Activities under Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) in 2015

Prepared by:

ACER, Market Monitoring Department  
October 2016



**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](mailto:david.merino@acer.europa.eu)

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## Foreword by the ACER Director



I am pleased to present the fourth Report on the Agency's activities under Regulation (EU) No 1227/2011 on Wholesale Energy Market Integrity and Transparency (REMIT) in 2015.

REMIT plays an important role in the completion of a well-functioning internal energy market in the European Union. Well-functioning markets should work on the basis of reliable price signals, namely price signals which reflect the demand and supply fundamentals and are not distorted by abusive market behaviour. Security of supply also benefits from well-functioning markets. 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, both of which are essential components of the Energy Union strategy.

REMIT has introduced a new and unprecedented sector-specific monitoring framework to detect and prevent market abuse in European wholesale energy markets. As REMIT covers legislative and technical aspects on which there is little experience worldwide, its implementation has posed a formidable challenge to the Agency.

2015 was a crucial year in this process. The Commission Implementing Regulation (EU) No 1348/2014 (hereafter: 'Implementing Acts') entered into force on 7 January 2015. The entry into force of the Implementing Acts can be seen as the actual starting point of the REMIT operational stage. The Implementing Acts outlined the timeline for the full application of the new monitoring framework for European wholesale energy markets and triggered several deliverables for the Agency.

In this respect, the Agency achieved major REMIT milestones in 2015. Thanks to the Agency's extensive preparatory work in the previous years, it was able to launch its REMIT Portal – the single point of access for all REMIT-related applications and key documents – and to open the registration of Registered Reporting Mechanisms (RRMs) on 8 January 2015. The Agency's REMIT Information System (ARIS) is therefore operational since that date. At the same time, the Agency also published the REMIT Reporting User Package. The European Register of Market Participants, which is based on the national registers held by the National Regulatory Authorities (NRAs), was established on 17 March 2015. On 7 October 2015, the Agency began the first phase of data collection and monitoring.

The second phase of data collection and monitoring started on 7 April 2016. The Agency now receives the necessary information, which it can use to detect and deter market manipulation and trading based on inside information, ensuring market integrity and transparency for the benefit of European energy consumers and citizens.

These milestones were achieved despite a level of resources clearly inadequate in relation to the Agency's mandate. This required the deprioritisation of a number of activities, including some in the REMIT implementation area such as the publication of parts of the trade information the Agency possesses or close cooperation and coordination with the European Securities and Markets Authority (ESMA), national financial market authorities and competition authorities. It also led to reassessing the scale of its market monitoring of European wholesale energy markets. Only in 2016 was the Agency authorised to recruit some additional human resources, even though the gap with respect to what would be required to effectively implement REMIT persists. Going forward, the way in which the Agency's monitoring of European wholesale energy markets will be organised, and its effectiveness, will crucially depend on the available human resources – in terms of expert market analysis capabilities.

The experience with energy market abuse cases in other parts of the world clearly show the benefits of investing in adequate market monitoring. It indicates that effective market monitoring can detect potential market abuses that could otherwise have a significant detrimental impact on the market. The deterring effect of market monitoring, whose benefits cannot easily be quantified, should also be taken into consideration. Compromising on the quality of market monitoring, through inadequate resourcing, will eventually cost more, to the Union's energy market and ultimately to its consumers, than investing in a proper and effective REMIT implementation.

The experience from the first operational year has revealed a much larger number of records of transactions, including orders to trade, reported to the Agency - in the order of one million per day - than the prudent estimates previously made. The Agency notes that a high number of transactions is likely to reflect liquid and competitive markets. However, it also poses an additional challenge to the Agency.

The challenging work of implementing REMIT, which is described in this report, has involved NRAs – which may also monitor energy markets at national level 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 providing their input into the process. I would like to express my gratitude to all of these actors for their continuous constructive cooperation, which have contributed to achieving the 2015 REMIT milestones.

I would also like to thank the ITRE Committee of the European Parliament and the European Commission – Directorate General for Energy for their continuous support.

Finally, I would like to commend the persevering dedication and effort of my colleagues in the Market Monitoring Department who, despite the very limited resources, are making REMIT implementation and operation a reality.

Ljubljana, October 2016



Alberto Pototschnig  
ACER Director

# 1 Introduction

- 1 This is the fourth 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 2015 in order to implement REMIT and fulfill its obligations under the regulation.
- 2 On 28 December 2011 the prohibitions under REMIT 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 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, the Member States were required to assign investigatory and enforcement powers to their NRAs and to put in place rules on penalties for infringements of REMIT.
- 4 REMIT is supplemented by the REMIT Implementing Acts. The adoption of the REMIT Implementing Acts on 17 December 2014, and their entry into force on 7 January 2015, had a considerable impact on the Agency's operation and workload in 2015. The Implementing Acts define both the scope and timeline for REMIT implementation. 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.
- 5 The milestones introduced by the REMIT Implementing Acts for REMIT implementation are presented in the timeline below.

Figure 1: Timeline for the Implementation of REMIT



**GLOSSARY**

**ENTSO**  
European Network of Transmission System Operators

**IAs**  
Implementing Acts

**NRA**  
National Regulatory Authority

**OMP**  
Organised Market Place

**OTC**  
Over-the-counter

**RRM**  
Registered Reporting Mechanism

**TRUM**  
Transaction Reporting User Manual

- 6 The activities of the Agency with respect to REMIT are performed in two stages:
1. The **implementation stage**, during which the Agency put 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. This stage started with the entry into force of REMIT on 28 December 2011. In 2015, the Agency continued to develop and adapt IT systems for the registration of market participants, data collection and sharing, and the effective monitoring of wholesale energy markets.

The implementation stage was completed within 18 months following the entry into force of the REMIT Implementing Acts, and therefore continued until 6 July 2016. On that date, the reporting obligation on market participants took full effect and so the complete monitoring framework had to be in place when the second phase of reporting started, including the backloading of outstanding contracts from the second phase of reporting. Therefore, the implementation stage overlapped 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 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 with a cross-border element.

Although the Agency was already required to act since the entry into force of REMIT on instances of delayed publication of inside information, of suspected market abuse, and to coordinate cross-border investigations, it considers the Implementing Acts' entry into force on 7 January 2015 as the actual starting point of the operational stage.

The data reporting to ACER by market participants and third parties reporting on their behalf was launched in two stages, in line with the requirements of the REMIT Implementing Acts. 7 October 2015 was the first day of REMIT reporting for all orders and trades that arise from activity on Organised Market Places (OMPs) and fundamental data from the European Network of Transmission System Operators' central information transparency platforms. On 7 April 2016 reporting started on transactions in the remaining wholesale energy contracts (Over The Counter (OTC) standard and non-standard supply contracts; transportation contracts) and reportable fundamental data from Transmission System Operators (TSOs), LNG System Operators (LSOs) and Storage System Operators (SSOs).

- 7 It is worth noting that due to the two phases of data collection under the REMIT Implementing Acts, the implementation stage and the operational stage overlapped for a significant transitional period, from 7 January 2015 to 6 July 2016. During this transitional period, the Agency applied 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. It should also be noted that the implementation of additional IT tools and procedures are still ongoing in 2016, and potentially will continue in 2017. This is in order to further enhance the existing systems, such as the collection of inside information, EMIR<sup>1</sup> derivatives data, and data sharing with other entities (i.e. beyond NRAs).

1 European Market Infrastructure Regulation (Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories)

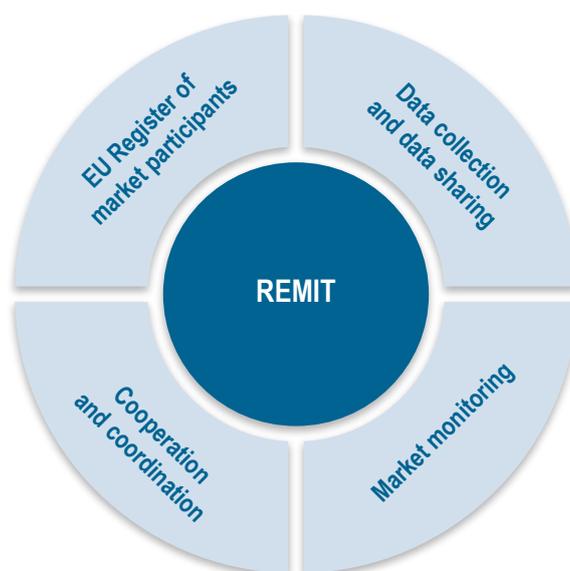
- 8 In 2015, various milestones were reached, mainly related to the operational phase. On 8 January 2015, the REMIT Portal, which is the central point of entry to the Agency's REMIT Information System, went public. At the same time, the Agency began the registration of RRM for submission of data to ARIS and the Agency published the REMIT Reporting User Package with the Transaction Reporting User Manual (TRUM), the Manual of Procedures on transaction and fundamental data reporting and the Requirements for the registration of RRM which were required to be published upon entry into force of the Implementing Acts. On 17 March 2015, the Agency launched the European Register of Market Participants, which was based on the information transmitted from the national registers established and kept up to date by NRAs. Finally, 7 October 2015 was the first day of data reporting and monitoring by the Agency.
- 9 With the REMIT core implementation activities now completed, the Agency is responsible for collecting and monitoring wholesale energy market data to identify possible instances of market abuse. After an initial assessment, the Agency notifies the relevant NRAs of any potential breach. NRAs 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 confidence in those markets by participants and final consumers.

## 2 The Agency's REMIT Implementation Activities in 2015

### 2.1 Introduction

- <sup>10</sup> The implementation of REMIT remained a priority for the Agency in 2015, although the focus shifted more towards the operational phase. The activities described in this chapter are classified into four categories: the European Register of Market Participants, data collection and data sharing, market monitoring and cooperation and coordination.
- <sup>11</sup> One of the major challenges the Agency has had to face since the preparatory activities for the REMIT implementation phase has been the limited information available to define complete business and technical requirements for the necessary processes and systems. The strategic decision taken to address this was to define a flexible and adaptable architecture, which would permit further fine-tuning according to the gradual specification of requirements.

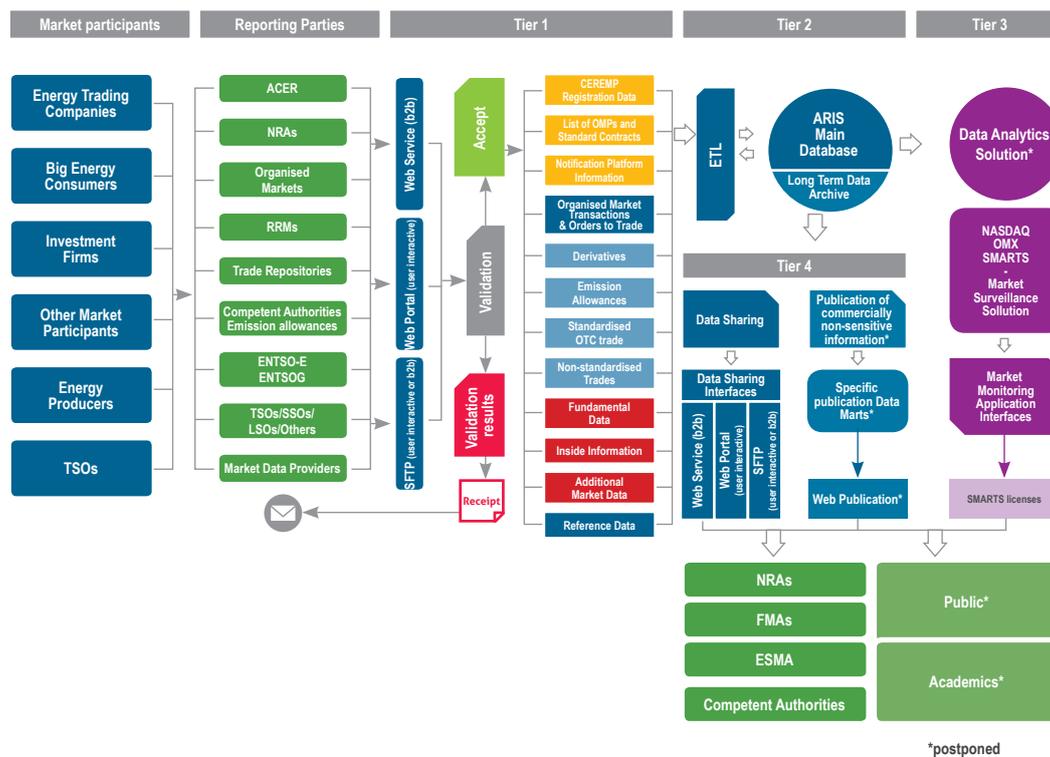
Figure 2: The Agency's Activities under REMIT



- <sup>12</sup> The Agency continued in 2015 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.
- <sup>13</sup> The Agency's IT implementation of REMIT was carried out in conjunction with IT consultants selected on the basis of several IT procurement tenders since 2012.

- <sup>14</sup> On the basis of the significant preparatory work undertaken 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, 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 Implementing Acts. CEREMP became an integral part of ARIS Tier 1 in 2014.
  2. **Tier 2 of ARIS** is the main database, where all the reported trade and fundamental data, as well as the registration data from market participants, is stored.
  3. **Tier 3 of ARIS** is the market surveillance system, which was launched on 1 June 2015. The surveillance software automatically screens and analyses 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 alerts the Agency's surveillance experts in the Market Monitoring Department. The market surveillance system may 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 market authorities (FMAs), national competition authorities, 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.
- <sup>15</sup> Figure 3 illustrates the concept and tier structure of ARIS, the IT solution underpinning REMIT data collection and processing, market monitoring and data sharing.

Figure 3: The ARIS High Level Design



- 16 In early 2015, the Agency launched its first publicly accessible component of ARIS – the REMIT Portal. Through the Portal, a number of applications were available immediately after it went live. The REMIT Portal is now the main access point for ARIS.
- 17 The REMIT Portal encompasses public access to relevant REMIT documents, to the Registered Reporting Mechanisms registration tool and the data collection platform. It also contains the regularly updated European Register of Market Participants as well as the list of Organised Market Places (OMPs), list of standard contracts, list of RRMIs and list of inside information platforms. Moreover, the REMIT Portal fully integrates CEREMP and the Notification Platform for suspicious transaction reports, for delayed disclosure of inside information and for the coverage of an immediate physical loss resulting from unplanned outages.
- 18 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, or unauthorised access to, the information contained within ARIS. The Agency successfully developed, with the agreement and support of NRAs, the comprehensive REMIT Information Security Policy that provides an efficient framework for addressing information security risks related to REMIT information.

## 2.2 Registration of Market Participants

- <sup>19</sup> 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 Member State in which they are established or active. A market participant shall register only with one NRA. Therefore, NRAs 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, by 17 March 2015, NRAs had to establish national registers allowing market participants to start registering. Following the registration of the market participants, NRAs have to transmit the information in their national registers to the European Register of Market Participants, maintained by the Agency through CEREMP. The publication of the European Register of Market Participants aims to enhance the overall transparency and integrity of wholesale energy markets. The Agency's activities relating to the registration of market participants are described in the following section.
- <sup>20</sup> CEREMP was made available to NRAs at the end of 2014. NRAs wishing to use it for the registration of market participants at national level were able to launch it as their national registration tool as of then. 25 NRAs are currently using CEREMP as their national registers of market participants, four NRAs are using their own registration tools and transmit the information in their national registers into CEREMP. The Agency made the European Register of Market Participants publicly available on 17 March 2015 and has kept it updated since that date.

## 2.2.1 Policy Development

### 2.2.1.1 Guidance to NRAs on Registration

- <sup>21</sup> 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 on the application of REMIT.
- <sup>22</sup> In its latest edition of the Guidance<sup>2</sup> 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. The guidance on the registration process is depicted in Figure 4 below.

Figure 4: Summary of the Registration Process



- <sup>23</sup> Market participants who had registered before 17 March 2015, when the Agency started to publish the list of market participants in the European register, were not able to complete Section 4 (data related to the corporate structure of the market participant) of the registration form by the time of their submission to their NRA. In accordance with the Agency Decision No 01/2012, they had to provide information on Section 4 of the registration form at the latest by 17 June 2015. Currently, market participants have to fill in the complete form when registering.

<sup>2</sup> The 4<sup>th</sup> edition, published on 17 June 2016, constitutes the most recent edition of the Guidance.

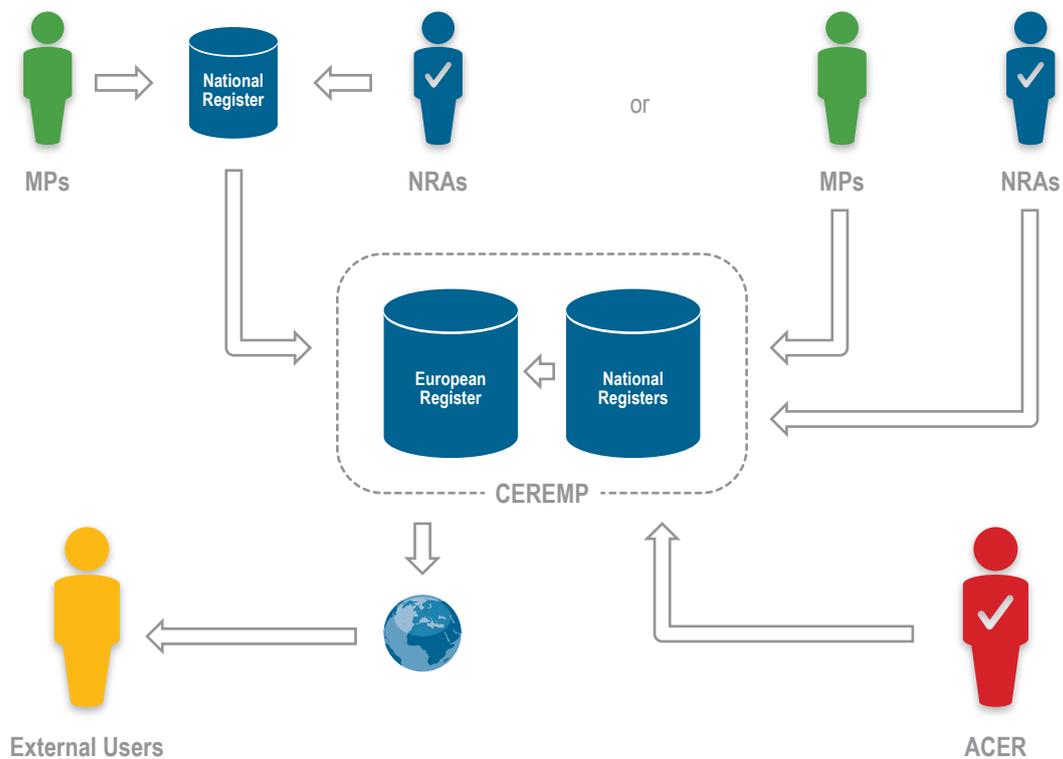
### 2.2.1.2 Publication of Extracts of the European Register of Market Participants under REMIT

- 24 REMIT requires 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 extracts of it, publicly available, provided that commercially sensitive information regarding individual market participants is not disclosed.
- 25 The European Register of Market Participants is based on the information provided by NRAs which they receive from the registered market participants in their Member State.
- 26 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.
- 27 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. On the first issue, 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. Regarding the second point, the respondents also agreed with the proposed 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.
- 28 The establishment of the European Register of Market Participants and the publication of its extracts started on 17 March 2015.

### 2.2.2 Software Development

- 29 The technical development of CEREMP started in early 2013, was finalised in June 2014 and first used at the end of 2014. CEREMP was designed to maintain the European Register of Market Participants, based on national registers established by NRAs. CEREMP was one of the first components of ARIS.
- 30 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.
- 31 NRAs have two options regarding the registration system:
- employing CEREMP for managing their own national register of market participants (NRA type A) or;
  - developing their own registration 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).
- 32 Four 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 (NRA type B2). Two other NRAs that opted out chose to transmit the data from their national register to CEREMP via batch upload or data entry (NRA type B1). The remaining NRAs decided to use CEREMP for managing their national registers.

Figure 5: The Role of CEREMP



- 33 CEREMP was successfully launched in June 2014 and the handover process continued until early 2015.
- 34 Significant documentation related to CEREMP was produced by the Agency. The Agency also provided NRAs with a user guide for each type (A/ B1/ B2), as well as a Registration User Manual for Market Participants which NRAs may use and adapt for the market participants which register with them.
- 35 In the course of 2015, CEREMP underwent developments to fix particular issues and to improve usability<sup>3</sup>.

<sup>3</sup> The Agency ran a public consultation on the Functioning and Usefulness of the European Register of Market Participants from 18 March to 22 April 2016. The outcome of this consultation will contribute to the development of a new update of CEREMP.

## 2.3 Data Collection and Data Sharing

### 2.3.1 Policy Development

#### 2.3.1.1 Data Collection Policy

- 36 In the light of the start of data reporting on 7 October 2015, a considerable amount of effort was spent on the preparation for the registration of RRMs during 2015. The focus was on the development of the relevant tools, on guidance to the market, on extensive engagement with ACER's stakeholders, and on raising awareness of the upcoming registration well ahead of time.
- 37 The draft Implementing Acts anticipated that the Agency would provide supporting documentation in order to facilitate and ensure the operational reliability of data reporting. The Agency prepared a 'REMIT Reporting User Package' to meet this requirement, which consists of the following documents:
1. Transaction Reporting User Manual according to Article 5(2) of the REMIT Implementing Acts;
  2. Requirements for the Registration of Registered Reporting Mechanisms (RRM Requirements), together with an RRM technical specification document, which is available to identified RRM applicants upon signing a Non-Disclosure Declaration, pursuant to Article 11(1) of the REMIT Implementing Acts.
  3. Manual of Procedures for Transaction and Fundamental Data Reporting according to Article 10(3) of the REMIT Implementing Acts, and;
  4. List of OMPs pursuant to Article 3(2) of the REMIT Implementing Acts;
  5. List of Standard Contracts pursuant to Article 3(2) of the REMIT Implementing Acts;
- 38 To summarise, the RRM Requirements specify the characteristics and requirements of the reporting parties, the lists of OMPs and standard contracts details the contracts to be reported under Phase 1, the Manual of Procedures delineates how to report, and the TRUM what to report..
- 39 The REMIT Reporting User Package is updated whenever necessary with most of the documents having been updated over the course of 2015, some more than once.
- 40 The Agency published the documents of the REMIT Reporting User Package 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 REMIT Implementing Acts, i.e. on 17 March 2015. The following sections describe in further detail the process that led to the adoption of the REMIT Reporting User Package and its updates in 2015.

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

- 41 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<sup>4</sup> 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 focussed primarily on that reportable information.
- 42 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 and NRAs to carry out a preliminary assessment of the behaviour of market participants, and to decide whether to request NRAs to carry out further analyses. Similarly, transaction reports are very important as evidence in both preliminary and formal investigations carried out by NRAs, as they provide an audit trail of the complete transaction.
- 43 During the spring of 2014, the Agency launched a first public consultation on the draft TRUM, based on the draft Implementing Acts presented by the Commission in October 2013. 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 2014 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 draft TRUM was reviewed in light of the input received, and modified where necessary.
- 45 Since the first publication of the TRUM on 8 January 2015, it has received two more updates in 2015, on 6 May 2015 and 30 September 2015. The first version of the TRUM covered in detail the reporting of standard contracts and presented some examples for non-standard supply contracts and transactions in transportation contracts. The 6 May update covered Annex II of the TRUM with trading scenarios for the purpose of REMIT data reporting of published standard contracts. The 30 September update concerned editorial changes and contained additional clarifications, guidance and examples. The update aimed to make it easier for stakeholders to understand the REMIT transaction reporting regime and to comply with their reporting obligations.
- 46 The Agency continues to update the TRUM on a regular basis.

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4 This was extended to nine months in the final draft before the adoption.

## ACER's RRM Requirements for Transaction Reporting under REMIT

- 47 The Agency's RRM Requirements for Transaction Reporting under REMIT, were published on 8 January 2015. They are used as basis for entities who want to become RRM. They constitute the technical and organisational requirements for submitting data. The Agency assesses whether reporting parties comply with the RRM Requirements and are subsequently registered as such by the Agency.
- 48 During 2013 and 2014, the Agency has consulted on three occasions on this topic. The draft RRM Requirements were reviewed in light of the input received, and modified where considered necessary. The final RRM Requirements for Transaction Reporting under REMIT have remained unchanged since 8 January 2015.
- 49 The RRM Requirements are complemented by technical specifications documentation, which describes in more detail how to report data to the Agency, and by data validation rules. Both of these were updated on 16 June 2015. The Agency makes these documents available to identified RRM applicants through the RRM registration system after the signing of a Non-Disclosure Declaration. The updates mainly provided necessary clarifications and additional information for the second phase of reporting under REMIT (as of 7 April 2016).

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

- 50 The Agency published the first version of its Manual of Procedures, together with the other documents in the REMIT Reporting User Package on 8 January 2015. It was based on the review of the draft Manual of Procedures after a public consultation in 2014. The first version of the Manual of Procedures covered all electronic formats for the first phase of reporting under REMIT. Some schemas for data reporting under the second phase of reporting were developed later.
- 51 On 30 June 2015, the Agency published an updated version of the Manual of Procedures. The update included a number of additional electronic formats for additional data types, related to the second phase of reporting. In addition, two existing schemas for the reporting of fundamental data were modified. The relevant industry associations requesting clarifications triggered these modifications.
- 52 The third updated version of the Manual of Procedures on data reporting was published on the REMIT Portal on 30 September 2015. The new version of the document contains new sections that describe the web feeds for the collection of inside information.
- 53 From 27 May 2015 to 30 June 2015, the Agency ran a public consultation on a common schema for the disclosure of inside information by market participants as per Article 4 of REMIT<sup>5</sup>. The purpose of this public consultation was to collect views from all interested parties related to the proposed common schema of the web feeds to which the Agency would have access. The consultation paper<sup>6</sup> included definitions for the web feeds that would enable the Agency to efficiently collect inside information disclosed by market participants, either directly or indirectly through service providers acting on their behalf. The paper proposed a common minimum standard in order to ensure fair, effective and transparent reporting of inside information.
- 54 Market participants are required to disclose inside information publicly. According to the REMIT Implementing Acts, market participants are also obliged to publish inside information. Even though the overall reporting obligation remains with the market participant, the market participant can use third party service providers for this purpose.

5 [http://www.acer.europa.eu/Official\\_documents/Public\\_consultations/Pages/PC\\_2015\\_R\\_03.aspx](http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2015_R_03.aspx)

6 [http://www.acer.europa.eu/Official\\_documents/Public\\_consultations/PC\\_2015\\_R\\_03/Consultation%20Paper\\_Common%20Schema%20for%20the%20Disclosure%20of%20Inside%20Information\\_20150525.pdf](http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2015_R_03/Consultation%20Paper_Common%20Schema%20for%20the%20Disclosure%20of%20Inside%20Information_20150525.pdf)

- 55 Through the public consultation, the Agency asked stakeholders to comment on the overall standard presented in the consultation paper and also posed specific questions for which it sought feedback. The Agency inquired if respondents would add, remove or change any fields presented in the public consultation paper. The Agency also inquired if respondents agreed to use RSS or ATOM feeds in order to fulfil their obligations. Respondents were asked to explain their reasoning and suggest any industry standards in support of their proposal.
- 56 In total, 45 stakeholders from over ten Member States replied to the public consultation. Most responses came from market participants and industry associations. Also TSOs/DSOs and energy exchanges participated and provided their feedback.
- 57 Overall, the respondents recognised the need to rationalise and harmonise the procedures for the collection of inside information by the Agency. They also proposed specific measures to improve the standards for the web feeds.
- 58 Based on the feedback, the Agency published data fields and electronic formats for the reporting of inside information as new chapters in the Manual of Procedures on transaction and fundamental data reporting<sup>7</sup>. This approach will enable market participants to transmit disclosed inside information through web feeds in a consistent manner allowing the Agency to collect it efficiently. This information is an important source for the detection of market abuse and hence the exercise contributes to the Agency's efforts to further increase the transparency and integrity of wholesale energy markets.

#### List of Organised Market Places and List of Standard Contracts

- 59 Article 3(2) of the REMIT Implementing Acts states that, in order to facilitate reporting, the Agency shall draw up and publish a List of Organised Market Places as well as a public List of Standard Contracts upon the entry into force of the REMIT 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.
- 61 Between 14 November and 11 December 2014, the Agency conducted a public consultation on the provisional List of Organised Market Places. Based on the responses from the public consultation the Agency amended the provisional List of Organised Market Places.
- 62 The Agency published the List of Organised Market Places on its 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 REMIT Implementing Acts.
- 63 The List of Standard Contracts according to Article 3(2), first sub-paragraph, of the REMIT 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 REMIT Implementing Acts. It was the only component of the REMIT Reporting User Package published at a later stage, on 17 March 2015, following a public consultation.
- 64 The Agency regularly updates the List of Organised Market Places (OMP) and the List of Standard Contracts.

<sup>7</sup> This updated Manual of Procedures was published on 8 March 2016.

### 2.3.1.2 Data Sharing

- 65 Article 10(1) of REMIT requires the Agency to establish mechanisms to share trade and fundamental data with NRAs, the competent financial market 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) 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). Under this 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, or 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 Agency<sup>8</sup>. The Agency shall therefore, also ascertain that those authorities are able to maintain an equally high level of security<sup>9</sup>.
- 67 Furthermore, Article 7(2) of REMIT states 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 order to formalize these legal requirements, various actions have been undertaken in 2015. Memoranda of Understanding (MoUs) for data sharing were established between the Agency and NRAs (see section 2.5.5.1). The MoUs were complemented by technical documentation on their implementation, especially with regards to ensuring operational reliability and data security.
- 69 In 2015, the Agency continued the implementation of the data sharing policy developed in cooperation with NRAs, in order to share the trade and fundamental data collected from 7 October 2015 onwards, whilst enabling the Agency to meet the requirements of Article 12(1) of REMIT.

### 2.3.2 Software Development

- 70 The software development regarding data collection and data sharing is related to Tier 1 and Tier 4 of ARIS. As explained in section 2.1, Tier 1 deals with the collection of the reported trade and fundamental data, as defined in the REMIT Implementing Acts. Tier 4 is the data sharing system. The data collection and data sharing components were launched, as parts of ARIS, in the course of 2015.
- 71 In order to adapt to new challenges in the REMIT implementation programme, the Agency adopted a flexible approach to IT development. Based on that approach, three ARIS Prototype Releases were delivered over the past years, the last one at the end of October 2014. The ARIS Prototype Release 3 integrated the various components into the ARIS platform.
- 72 In parallel to the ARIS Prototypes, the Agency had launched a REMIT Implementation Pilot Project on 11 July 2013. This was set up to anticipate the Agency's obligations stemming from the REMIT Implementing Acts and to prepare for data collection and monitoring in advance. This was essential to ensure the smooth implementation of REMIT. The Pilot Project gave valuable insight into the development of ARIS and REMIT implementation in general.
- 73 In terms of system implementation, ARIS underwent major developments. Some of these developments are briefly highlighted in the following:

8 See Article 12(1) REMIT.

9 See Recital 23 REMIT.

- The Tier 1 data collection interfaces for uploading and collecting data were launched on 5 October 2015. The interfaces (Web Service, Web Portal or SFTP) support multiple data types.
- The Tier 4 data sharing system went live on 13 November 2015. The initially planned parallel go-live with data collection on 7 October 2015 could not be maintained and had to be postponed for resource constraint reasons. The same type of interfaces as for Tier 1 (Web Service, Web Portal or SFTP) are available for sharing data with NRAs and other competent authorities. As described in section 2.3.1, the access to the data sharing system is granted to NRAs that are compliant with the defined security standards.
- Data validation rules were developed, allowing for consistency between input data from Tier 1 and extracted data from Tier 2 to Tier 3. The data validation rules are designed to ensure compliance of reported data with the technical and other requirements so as to fulfil legal obligations.
- A centralised database for all the data collected under REMIT was implemented in 2015. This includes logical and physical data models, performance optimisations and architectural solutions to ensure high availability and resilience.
- The Agency developed and implemented the Centralised User Management and Log Management consoles in order to manage different system modules.
- The RRM registration module was developed in 2014 and integrated into ARIS in 2015.
- The REMIT Portal was developed in 2014, and launched to the public in early 2015. The Portal was further improved and developed throughout 2015.

<sup>74</sup> In 2015, ACER shifted from development project activities to parallel operations management, covered in chapter 3 of this report. Various actions were taken 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. This includes the setting up of the Central Service Desk, and all the necessary processes (e.g. incident management and change management), to ensure that the Agency provides quality support services to ARIS users.

<sup>75</sup> The successful launch of ARIS, in particular the data collection and data sharing components, can be attributed largely to the vast preparatory effort that has been undertaken in the previous years.

<sup>76</sup> In the course of 2015, the main developments in terms of data collection and data sharing were related to quality assurance, performance, usability, and issue resolutions.

## 2.4 Market Monitoring Solution

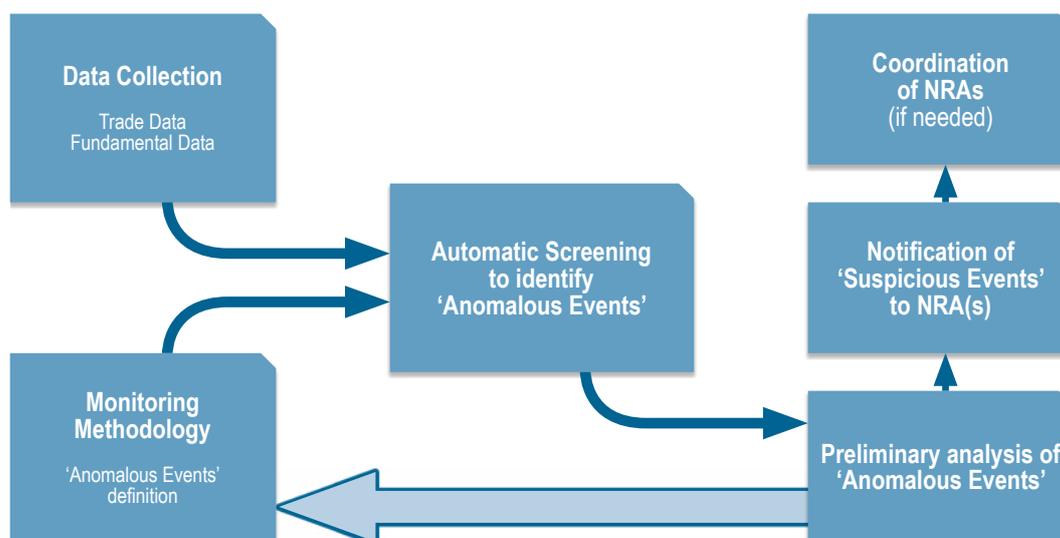
<sup>77</sup> According to Article 7 of REMIT, the Agency shall monitor trading activity in wholesale energy products to detect and prevent market manipulation, attempted market manipulation and trading based on inside information. According to Article 16 of REMIT, NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets, and ensure that the prohibitions of market manipulation, attempted market manipulation and insider trading are applied in accordance with Article 13 of REMIT. In this section, the Agency's market monitoring approach under REMIT is described based on the legal framework provided in REMIT.

<sup>78</sup> The Agency considers that market monitoring encompasses prevention, market surveillance, including data screening and initial assessment, and market conduct activities, mainly dealing with more in-depth analysis of potential breaches.

### 2.4.1 Policy Development

<sup>79</sup> Since the beginning of REMIT implementation in 2011, the Agency has been working on the development of a market surveillance approach. The figure below shows a schematic view of this approach.

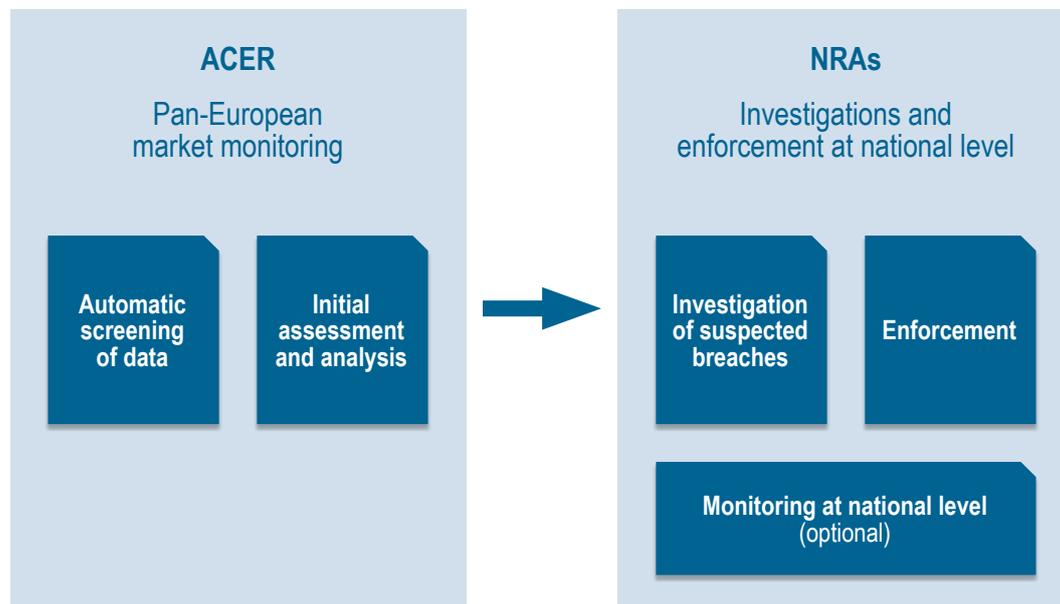
Figure 6: The Agency's Market Surveillance Approach



<sup>80</sup> The acquisition of trade and fundamental data is enabled from ACER's data warehouse, which is part of ARIS Tier 2. The data warehouse has been growing constantly since data reporting started on 7 October 2015. The automated screening forms 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.

<sup>81</sup> The following figure illustrates this two-step approach, where ACER's role is mainly on the market monitoring within the Union with the identification of potential breaches and preliminary analysis of anomalous events while the investigations and enforcement at national level is the responsibility of the NRAs. However, NRAs may also perform their own market monitoring at national level in accordance with REMIT.

Figure 7: The two-step monitoring approach between ACER and NRAs



#### 2.4.2 Software Customisation

- 82 Since the conclusion of the Framework Contract with NASDAQ OMX to provide the Agency with the SMARTS market monitoring system, a lot of effort has been devoted to develop the specific functionality required.
- 83 SMARTS has proven to be a robust surveillance platform. The solution correlates close to real-time and historical data with detection patterns to ensure early detection of unusual trading patterns that could be potential breaches of exchange or regulatory trading rules and practices.
- 84 The work on SMARTS was divided in two phases. Phase 1, which was released on 1 June 2015, included the customization of the user interface for the scope of REMIT, ACER's initial setup, additional data validation tools, and a new auction analyser module. Phase 2, released in November 2015, included the construction of data gateways for transportation contracts and fundamental data, a fundamental data viewer module, and the maintenance of phase 1. With the start of data reporting on 7 October 2015, SMARTS formally went live.
- 85 SMARTS is part of the Tier 3 of ARIS representing a market monitoring software solution which plugs into the central data warehouse (Tier 2) and is able to identify abnormal trading activity and behaviour in the markets. This is mainly achieved through alerts which are defined by the market surveillance strategy and includes the following potential breaches:
- cross-border manipulation;
  - cross-market manipulation;
  - cross-venue manipulation;
  - cross-commodity manipulation;
  - cross-product manipulation;
  - unusual price and volumes;
  - insider trading.

## 2.5 Coordination and Cooperation Framework

- 86 Regulatory cooperation is essential and constitutes one of the key elements of REMIT. Close cooperation and coordination between the Agency and NRAs is necessary to ensure proper monitoring of energy markets. Coordination is needed between the wide-ranging scope of responsibilities of the Agency (monitoring of the European market) and of NRAs (monitoring at national level and enforcement).
- 87 The creation of the Agency's Market Integrity and Transparency Working Group (AMIT WG) allowed the early input of NRAs in the Agency's REMIT implementation work. In early 2015, in order to illustrate the transition from implementation to operations, the REMIT Coordination Group (REMIT CG) was established to contribute to the Agency's coordination work on issues related to market integrity and transparency, especially by facilitating the exchange of information and the coordination of surveillance and enforcement actions in the fields of market abuse. In this respect, the Agency's coordination role under REMIT will be different from the Agency's role to enable NRAs to enhance their cooperation at Union level under the Third Energy Package. Furthermore, the regular discussions in the Agency's Board of Regulators (BoR), which is consulted on all REMIT implementation aspects and whose advice and opinions are given consideration by the Director, will continue to promote such collaboration and to ensure that a coordinated approach is taken to the implementation of the relevant rules.

### 2.5.1 AMIT Working Group and Task Forces

- 88 The ACER Market, Integrity and Transparency Working Group (AMIT WG) was established by the Director of the Agency in 2012. It brings together Agency staff and senior representatives of NRAs. The European Commission is also invited to participate. The following task forces continued their operations in 2015:
- The Wholesale Markets Surveillance Task Force (WMS TF) provides input for the continuous updating of the non-binding ACER Guidance on REMIT towards NRAs, and facilitates the cooperation and coordination of market monitoring practices.
  - The REMIT IT management and governance 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 related issues.
- 89 Both the AMIT WG and its task forces provide support to the Agency in carrying out its duties under REMIT.
- 90 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.

### 2.5.2 REMIT Coordination Group and Standing Committees

- 91 With the entry into force of the REMIT Implementing Acts in January 2015 and the start of the REMIT operational phase later that year, the REMIT Coordination Group was established early in 2015, bringing together Agency staff and senior representatives in charge of the application of REMIT in all NRAs, to support a coordinated application of the Regulation. The REMIT CG met four times in 2015 and operates under similar rules as the AMIT WG.

92 The following Standing Committees operate under the REMIT CG umbrella:

- The Market Monitoring Standing Committee (MM SC) performs detailed technical analysis and promotes in depth technical discussions on specific topics related to the market monitoring obligation set in Article 7 of REMIT and to the cooperation at Union and national level that may arise from the application of Article 16 of REMIT.
- Market Data Reporting Standing Committee (MDR SC) focusses on market data reporting issues, in the initial phase mainly on data quality assessment.
- The REMIT Information Security Implementation Group (RISIG) provides support, advice and coordination on primary information security responsibilities of the Agency and NRAs under the Agency's REMIT information security policy.

### 2.5.3 Expert Groups

93 In the year 2015, two ad hoc expert groups were established. The 'REMIT ad hoc expert group', for which the public call was published on 17 March 2015, had four meetings in 2015. The second is the 'Ad hoc expert group on energy commodity derivatives' under Regulation 1227/2001 (REMIT), which met once in 2015. The purpose of the expert groups is to advise and assist the Agency on REMIT-related matters.

### 2.5.4 The REMIT Forum

94 In order to facilitate the exchange of opinions between NRAs and the Agency on issues related to REMIT, the Agency established the REMIT Forum in April 2012. The general idea behind the REMIT Forum was to provide a useful IT platform for ensuring the harmonisation of views on REMIT among the NRAs and the Agency.

95 In 2015 the REMIT Forum was incorporated into the internal process that produces the Agency's Questions & Answers on REMIT. This was done in order to provide a coherent overview to recurring questions on REMIT along with the Agency's answers to those questions, thereby addressing a wider public.

### 2.5.5 Cooperation at Union Level and beyond

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

97 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.

98 The scope and practicalities of implementing cooperation between NRAs, ESMA and the Organised Market Places have been outlined within the relevant 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.

99 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.

### 2.5.5.1 The MoU between the Agency and NRAs

- <sup>100</sup> On 17 July 2013, the Agency signed 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, and with the aim of promoting the effective, efficient and coordinated monitoring of wholesale energy markets as required by REMIT.
- <sup>101</sup> In accordance with the MoU, the cooperation between the Agency and NRAs is based on the principle of division of competences 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 cooperation.
- <sup>102</sup> 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.
- <sup>103</sup> In 2015, the Agency, in cooperation with NRAs, worked on an amended version of this Multilateral MoU, specifying which secure communication channel should be used by the Agency and NRAs to cooperate and exchange information on potential REMIT breaches.
- <sup>104</sup> This general MoU with NRAs has been supplemented since 2014 by additional bilateral agreements between the Agency and NRAs on data sharing and the use of CEREMP.

### 2.5.5.2 The MoU with ESMA

- <sup>105</sup> The European and Securities Markets Authority has been and remains one of ACER's key stakeholders. Due to the numerous interconnections between REMIT and the Union's financial market regulation it is crucial that ESMA and ACER cooperate on matters of mutual interest. Indeed there are several references in REMIT to the cooperation foreseen 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.
- <sup>106</sup> As early as 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.
- <sup>107</sup> 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. Recognising this, in July 2013, the Agency and ESMA signed an MoU to facilitate cooperation and a coordinated approach to wholesale energy markets. The main aim is to ensure that our cooperation should contribute to a coherent and consistent approach to the application of the market abuse framework (under MAD<sup>10</sup>/MAR<sup>11</sup> and REMIT) as well as of reporting obligations (under REMIT and EMIR).

<sup>10</sup> Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse Directive)

<sup>11</sup> Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation or MAR)

- 108 The MoU has provided an impetus to further cooperation between the Agency and ESMA which have taken part in each other's relevant Working Group, Standing Committee and Task Force meetings. With the entry into force of MAR on 3 July 2016 (and MiFID II on 3 January 2018) there will be an increased necessity for good cooperation between FMAs and NRAs on potential instances of market abuse in both the physical and derivatives markets for gas and electricity. The Agency and ESMA are well placed to facilitate and complement that cooperation where necessary.
- 109 The MoU has also provided that ESMA and the Agency 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.
- 110 Throughout 2015, the Agency and ESMA cooperated on several topics at a technical level.
- 111 The MoU between the Agency and ESMA requires both parties to periodically review the functioning and effectiveness of the cooperation arrangements between them and to potentially expand or alter the scope or operation. This is something that the Agency will, in close consultation with ESMA, examine further during 2016 to ensure our cooperation arrangements are as flexible and effective as possible.

#### 2.5.5.3 The MoU with Major Organised Market Places

- 112 According to Recital 18 of REMIT, the Agency may establish strong links with major OMPs 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.
- 113 Following discussions between the Agency and representatives of major OMPs, including energy exchanges, energy brokers and other PPATs, an MoU between the Agency and OMPs, concerning cooperation on market monitoring under REMIT, was agreed in 2013.
- 114 The purpose of the MoU is to set out the content and procedures for the cooperation between the Agency and major OMPs on issues relating to market monitoring under REMIT. Under the MoU, market monitoring experts from major OMPs 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 OMPs in relation to their market data, when assessing and monitoring wholesale energy markets in accordance with Article 7(1) of REMIT.
- 115 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.
- 116 Cooperation under the MoU is based upon the individual decision of each major OMP.
- 117 By 31 December 2015, fifteen OMPs from ten Member States had signed the MoU.

#### 2.5.5.4 The MoUs with Third Countries' Authorities

- <sup>118</sup> On 6 January 2015 the Agency signed an MoU with the US Federal Energy Regulatory Commission (FERC) to enhance consultation, cooperation and the exchange of information relating to the monitoring of cross-border wholesale energy markets.
- <sup>119</sup> The MoU is an important step in ensuring the effective monitoring of wholesale electricity and gas market activities in both the United States and the European Union and will promote market integrity and customer protection in the global energy markets.
- <sup>120</sup> At the end of 2015, the MoU was extended to foresee the possibility of exchanging staff. This possibility was used at the beginning of 2016, when FERC seconded experts to the Agency for a period of one year.
- <sup>121</sup> FERC's experience shows the importance of strong market surveillance. In 2013, for example, FERC concluded several market abuse investigations, including two high-profile cases in which unjust profits amounting to around US\$ 160 million were identified. Since its establishment in 2007, total disgorgement amounts to over US\$ 300 million, while civil penalties assessed exceed US\$ 640 million. These numbers can still considerably increase as many cases are pending.

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

### 3.1 Introduction

<sup>122</sup> REMIT introduced the explicit prohibitions of market manipulation, attempted market manipulation and insider trading, which took effect immediately as of the regulation entering into force on 28 December 2011<sup>12</sup>.

<sup>123</sup> Article 7 of REMIT also established 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.

<sup>124</sup> In 2015, the Agency's activities shifted from the implementation of the Agency's REMIT Information System towards its operation. The operational phase started on 7 January 2015 with the entry into force of the REMIT Implementing Acts. Before this date, the Agency was already active in monitoring the European wholesale energy market activities, based on publicly available information and data obtained from specialised sources. Its actions were complemented by NRAs' monitoring activities at national or regional level. Furthermore, PPATs were contributing to the identification and notification of potential breaches of the market abuse prohibitions under the legal obligations defined by Article 15 of REMIT.

<sup>125</sup> The main events that contributed to the realisation of the operational phase are:

1. The entry into force of the REMIT Implementing Acts on 7 January 2015. The acts draw up the list of reportable contracts and derivatives, lay down the details, timing and form of reporting and adopt uniform rules on the reporting of information to the Agency;
2. The REMIT Portal go live on 8 January 2015. The REMIT Portal is the central point of entry to ARIS. The REMIT Portal allows reporting parties to start registering themselves as RRM. The REMIT Portal is also the access point to the Agency's supporting documentation, namely the Transaction Reporting User Manual, the Manual of Procedures on transaction and fundamental data reporting, the Requirements for RRM, the List of OMPs, the List of Standard Contracts, the List of RRM and the List of Inside Information Platforms<sup>13</sup>;
3. The Agency first published the European Register of Market Participants on 17 March 2015. It was based on the NRAs' national registers for market participants. The Agency regularly publishes updates of the European register;
4. Data reporting and monitoring by ACER, which started on 7 October 2015. This first phase of reporting encompassed reporting of all orders and trades that arise from activity on OMPs and fundamental data from the ENTSOs central information transparency platforms. The second phase of reporting started on 7 April 2016, with the reporting of transactions in the remaining wholesale energy contracts (OTC standard and non-standard supply contracts; transportation contracts) and of fundamental data from TSOs, LSOs and SSOs.

<sup>12</sup> 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.

<sup>13</sup> See also Annex II on the usage of the REMIT Portal.

<sup>126</sup> According to Article 16 of REMIT, the Agency shall 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 2015, the Agency was performing several of these tasks.

## 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

<sup>127</sup> Article 16(1) of REMIT obliges the Agency to publish non-binding guidance on the application of REMIT definitions, as a way of helping NRAs to carry out their tasks under REMIT in a coordinated and consistent way.

<sup>128</sup> The Agency published an 'updated third edition' of the ACER Guidance to NRAs on the application of REMIT (hereafter 'the Guidance') on 3 June 2015. The updated edition was unchanged from the third edition save for the redrafting of Chapter 4 concerning the deadlines for market participants' registration submissions in order to comply with the new reporting timeline defined in Article 12 of the REMIT Implementing Acts.

<sup>129</sup> In addition, during the course of 2015, the Agency continued to further elaborate specific areas of the Guidance with potential impact on market monitoring and coordination. This included the publication of a Guidance Note on the concept of PPATs in March 2015<sup>14</sup>.

#### Updated third edition of the Guidance

<sup>130</sup> According to Article 9(4) of REMIT, 'market participants (...) shall submit the registration form to the NRA prior to entering into a transaction which is required to be reported to the Agency in accordance with Article 8(1)'. The REMIT Implementing Acts specify that for market participants entering into transactions on an OMP, the registration obligation takes effect, at the latest, prior to 7 October 2015. For all other market participants, the registration obligation takes effect, at the latest, prior to 7 April 2016 or prior to the first day they enter into transactions which are required to be reported to the Agency.

<sup>131</sup> The third edition of the Guidance was updated to reflect these changes, as well as to clarify the deadlines for the completion of Section 4 of the registration form for market participants who registered before 17 March 2015. All of these dates have now passed and the relevant REMIT reporting requirements now fall on all persons deemed market participants. The Agency therefore considers that any person who enters into a transaction that is required to be reported to the Agency without having submitted the registration form to the relevant NRA is potentially in breach of Article 9 of REMIT.

<sup>14</sup> Other aspects of the Guidance were further developed and published in a fourth edition on 17 June 2016 and will be presented in detail in the next REMIT annual report.

### Delimitation of the Concept of PPAT

- 132 In order to provide Guidance to NRAs on the application of the concept of PPAT, the Agency published a Guidance Note on the PPAT concept in March 2015.
- 133 From Article 8(4)(d) of REMIT, it can be derived that OMPs 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. However, while the concepts of 'Organised Market Place' or 'organised market' are defined in Article 2(4) of the REMIT Implementing Acts, the concept of 'other PPATs' was not explicitly defined in REMIT or the REMIT Implementing Acts.
- 134 In cooperation with the NRAs, the Agency assessed the three different elements of the notion of PPAT independently, and defined a set of criteria and provided examples that should be taken into consideration by NRAs in the application of the concept<sup>15</sup>.

### Guidance on the fulfilment of PPAT obligations

- 135 An important number of trades in the wholesale energy markets are intermediated by PPATs. Through their role as intermediaries, PPATs have exclusive market knowledge of their market and clients, and hence are in a suitable position to monitor trading activity and detect abusive behaviour. Therefore, REMIT puts an explicit responsibility on PPATs to monitor and contribute to the integrity, transparency and proper functioning of the European wholesale energy markets.
- 136 According to Article 15 of REMIT, any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Articles 3 or 5 of REMIT shall notify the national regulatory authority without further delay. At the same time, Article 15 of REMIT also requires PPATs to establish and maintain effective arrangements and procedures to identify breaches of Articles 3 or 5 of REMIT.
- 137 Chapter 8.5 of the updated third edition of the Guidance already delineated the scope of these obligations. However, starting in 2015, and continuing in 2016, the Agency, in cooperation with the NRAs, has worked on the development of more detailed guidance for NRAs concerning the supervision of the obligations imposed on PPATs by Article 15 of REMIT.
- 138 The Agency published the results of this work in a new chapter 9 of the fourth edition of the Guidance on 17 June 2016. This new chapter further delineates what is comprised in the duty to notify suspicious transactions, what is expected from PPATs regarding effective arrangements and procedures to identify breaches of Articles 3 or 5 of REMIT, and the actions the Agency recommends NRAs to take in order to promote compliance with Article 15 of REMIT.

### Inside Information Disclosure

- 139 The third edition of the ACER Guidance already addresses the criteria that NRAs should take into consideration when assessing the effectiveness and the timeliness of the disclosure of inside information by market participants.
- 140 In addition, Article 10(1) of the REMIT Implementing Acts provides a specific legal basis, and establishes further requirements allowing the Agency to efficiently collect disclosed inside information. It sets out 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.

<sup>15</sup> The Guidance Note has been incorporated within the fourth edition of the Guidance published on 17 June 2016 (chapter 9.2).

<sup>141</sup> Moreover, according to Article 10(2) of the REMIT 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.

<sup>142</sup> On this basis, in 2015 the Agency continued the development work for the specification of further guidance on the way inside information should be disclosed. The Agency analysed the current practices for the disclosure of inside information and identified necessary improvements in terms of information content and in the way information is presented. Hence, in 2016 the Agency provided further details to the requirements outlined in REMIT and its Implementing Acts in the form of a Manual that establishes procedures<sup>16</sup>, standards and electronic formats.

<sup>143</sup> In this context, between 27 May 2015 and 30 June 2015 the Agency organised a public consultation on a common schema for the disclosure of inside information by market participants in compliance with Article 4 of REMIT<sup>17</sup>. The Agency published a paper evaluating the responses to this public consultation. It expects to report further on this development work during 2016.

### 3.2.2 The Market Monitoring Handbook

<sup>144</sup> The Market Monitoring Handbook (MMH) is a non-public document that provides a practical framework for the cooperation and consultation between the Agency and NRAs in the application of REMIT, without prejudice to the provisions set by EU and national legislation. It was developed and is shared exclusively between the Agency and the NRAs to improve the required coordination and consistency in monitoring and case handling under REMIT. As such it is a non-binding document which complements the MoUs signed by the Agency and the NRAs and acts as a reference point for the cooperation between the Agency and NRAs on potential breaches of REMIT.

<sup>145</sup> The first edition of the Market Monitoring Handbook was adopted in the third quarter of 2014. A second edition was developed during 2015 and adopted in December.

<sup>146</sup> The MMH aims to contribute to:

- efficient cooperation and coordination between all monitoring bodies under REMIT;
- streamlined interactions between monitoring bodies and market participants (MPs);
- consistent procedures for case handling and investigations throughout Europe, and
- more effective and efficient market monitoring at all levels.

<sup>16</sup> This was incorporated in the Manual of Procedures.

<sup>17</sup> See also section 2.3.1.1

### 3.3 The Agency's Market Monitoring Strategy

#### 3.3.1 Introduction

<sup>147</sup> As mentioned in section 2.4, the Agency shall monitor trading activity in wholesale energy products in order to detect and prevent trading based on inside information and market manipulation.

<sup>148</sup> The Agency considers market monitoring to encompass the surveillance as well as the analysis of market conduct.

<sup>149</sup> NRAs and PPATs play a complementary role by monitoring activities at the national and/or regional level.

<sup>150</sup> In 2015, the Agency and NRAs started to review the current market monitoring strategy to be applied by the end of 2016 in order to overcome resource constraints without additional organisational/governance problems and allow for a Europe-wide market monitoring.

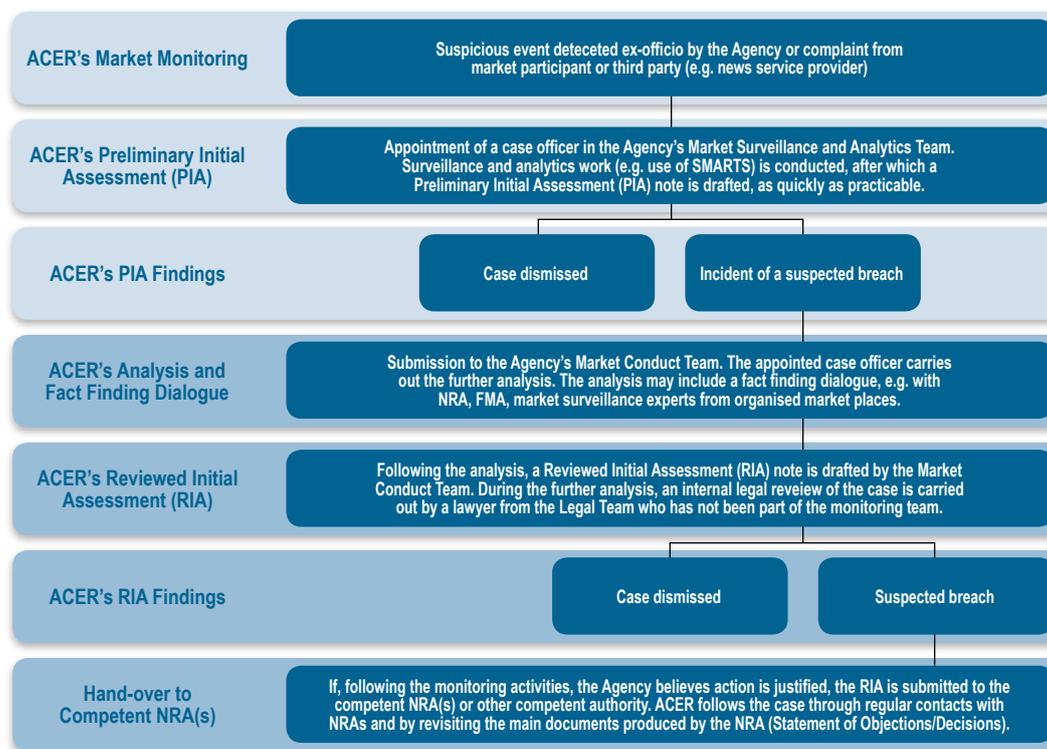
#### 3.3.2 The Market Monitoring Processes

<sup>151</sup> 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 competent 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). The Agency also coordinates NRAs when several NRAs are involved and ensures consistency.

## Ex officio cases

152 Figure 8 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 8: ACER's Approach to Market Monitoring – Ex officio and Complaint Cases



153 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.

154 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.

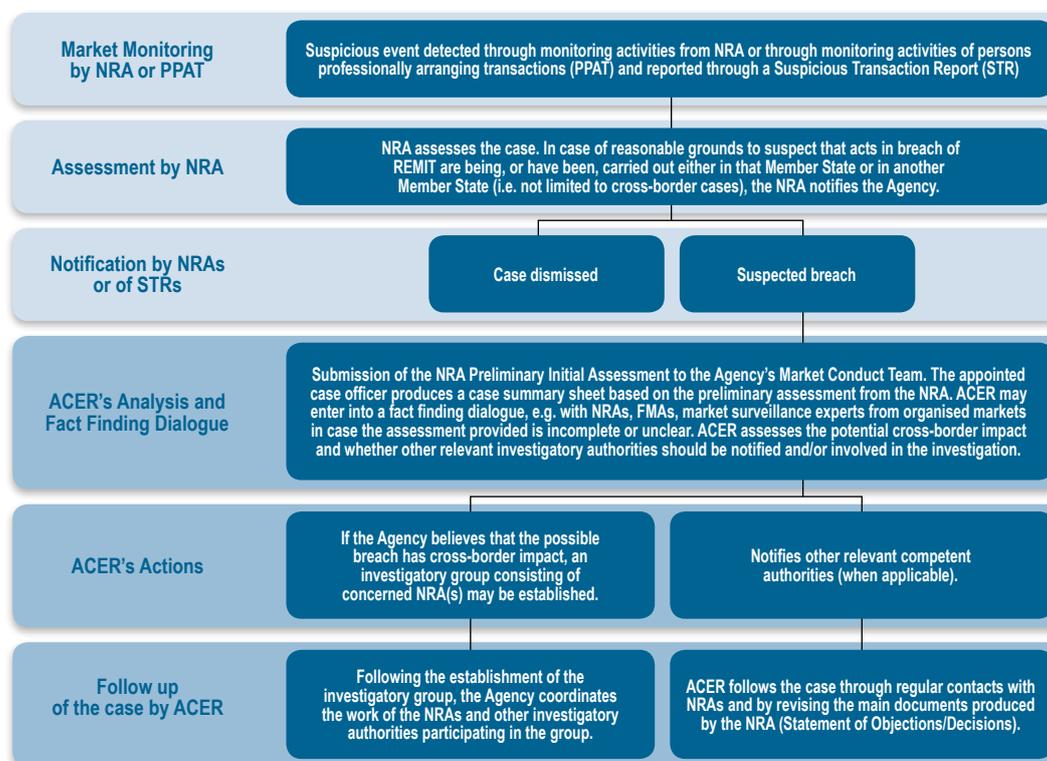
155 During this further analysis, an internal review of the case is carried out and presented in a Reviewed Initial Assessment (RIA). On the basis of the findings, the Agency either dismisses the case or finds reason to suspect that a breach of REMIT might have occurred. In the latter event, the Agency will hand the case over to the competent NRA(s), together with the relevant documentation regarding the potential breach. If the Agency believes that the possible breach has cross-border impact, then an investigatory group consisting of concerned NRAs may be established.

156 In order to smoothen the handover process to the competent NRA(s), a Case Management Tool (CMT) has been developed by the Agency. This CMT can be used by NRAs that fulfil several conditions, among which the obtaining of a security clearance. It was developed in the course of 2015.

## Non-ex officio cases

157 Figure 9 summarises the actions taken by the Agency in non-ex officio cases.

Figure 9: ACER's Approach to Market Monitoring – Notification from NRAs and STR Cases



158 According to Article 16(2) of REMIT, NRAs are obliged to inform the Agency without delay and 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.

159 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.

160 In order to facilitate cooperation with all parties, the Agency has developed an online Notification Platform<sup>18</sup>, 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.

18 See section 2.5.2

- 161 When suspicious trading, giving reasonable grounds for a potential breach of REMIT, is detected by an NRA, an FMA, 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 competent authorities. If that is not the case, a Case Summary will be prepared, all relevant competent authorities will be identified, and the Agency will notify those authorities<sup>19</sup>.
- 162 NRAs are obliged to notify the relevant FMAs and the Agency when detecting a possible breach of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation or MAR) (Article 16(3)(a) of REMIT).
- 163 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)<sup>20</sup>.
- 164 Correspondingly, the Agency shall inform ESMA and the competent FMA where it has reasonable grounds to suspect a possible breach of Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation or MAR) (Article 16(3)(b) of REMIT).

### 3.3.3 Market Monitoring Activities

- 165 Typically, market monitoring begins with the acquisition of trade data, fundamental data and inside information, market notifications and news items. It then proceeds with screening in order to identify 'anomalous events'. After the identified anomalous events are verified against the data, the Agency decides whether to dismiss or report them according to internal procedures.
- 166 Following initial assessments, the Agency may begin a fact-finding dialogue with the NRAs, financial market authorities or market surveillance experts from Organised Market Places.
- 167 The Agency's fact-finding exercise will lead to the production of a Preliminary Initial Assessment (PIA). This assessment includes the necessary information to make a decision on whether further scrutiny is needed.
- 168 The monitoring activity also comprises the continuous revision and improvement of the alerts used. The Agency's activities in 2015 were mainly focused on data quality and on learning from the first months of data collection. This exercise continues in 2016.
- 169 In 2015, the Agency performed some initial 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.

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

20 In principle, the case notification should have already occurred. 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 Directive and Regulation (MAD/MAR).

### 3.4 Case Overview

#### 3.4.1 Introduction

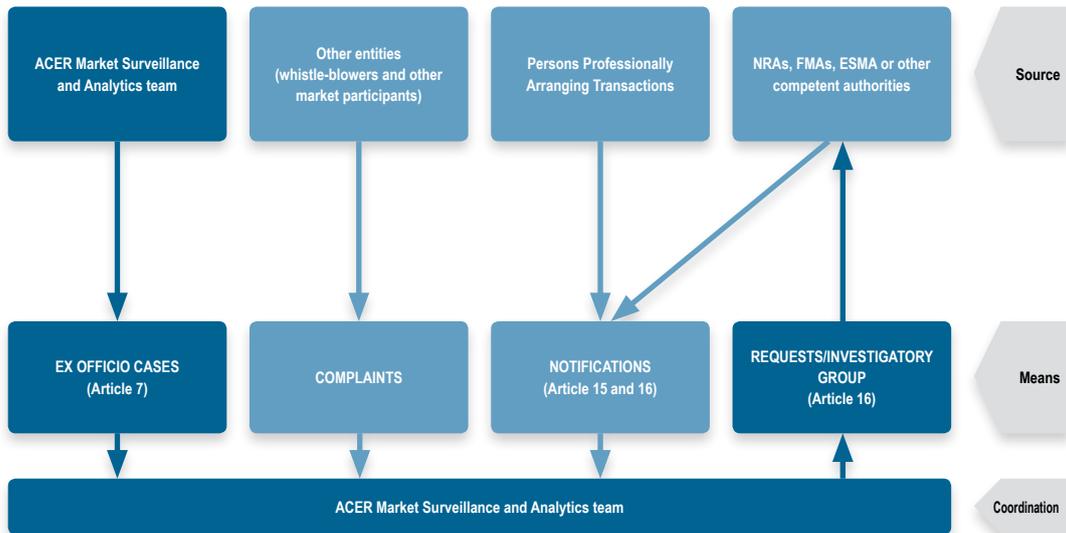
<sup>170</sup> Taking into account that the data collection under Article 8 of REMIT started in the last quarter of the year, the Agency mainly relied on notifications of suspected breaches of REMIT from NRAs, PPATs, market participants, as well as on public sources for its market monitoring activities. This will remain a crucial source of information also beyond 2015.

<sup>171</sup> In 2015, the Agency reviewed suspicious events detected by:

1. NRAs, FMAs, ESMA and other relevant competent authorities through notifications under Article 16(2) and (3) of REMIT;
2. PPATs under the obligation of Article 15 of REMIT;
3. ACER's market surveillance team; and
4. Other entities (namely whistle-blowers and other market participants).

<sup>172</sup> The main sources of cases are explained in the figure below:

Figure 10: Sources of Cases



<sup>173</sup> 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 for breaches of REMIT is coordinated and consistent across the Union. For that purpose, the Agency maintains regular contact with the relevant competent authorities in order to understand the steps taken and the progress made. The Agency also promotes best practices among the NRAs.

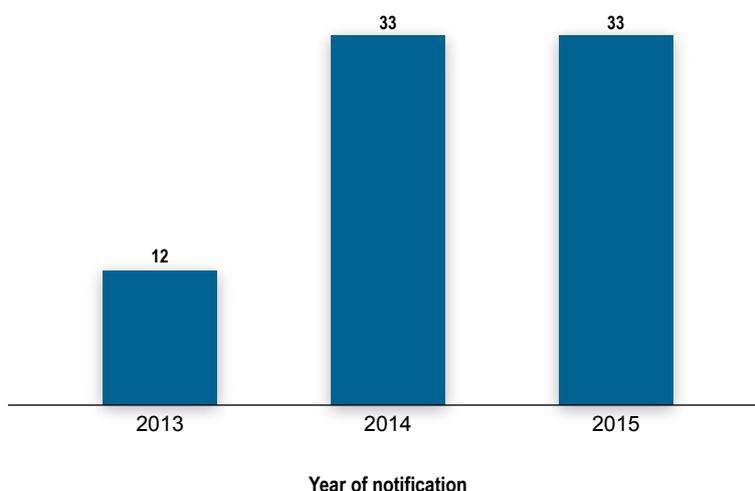
<sup>174</sup> Under the obligation of Article 15 of REMIT, the Agency designed a specialised tool, available on the REMIT Portal, for PPATs, NRAs, other entities and individuals to report possible breaches of REMIT. This Notification Platform is described in further detail in section 2.5.3.

<sup>175</sup> The following section provides a brief presentation of the case reviews concerning potential breaches of REMIT that the Agency examined in 2015. 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 for transparency reasons.

### 3.4.2 Statistics on Case Reviews

<sup>176</sup> Figure 11 shows the overall number of new cases involving potential breaches of REMIT remained stable, at 33, after a steep increase from 2013 to 2014.

Figure 11: Number of New Cases Reported to/by the Agency in 2013, 2014 and 2015<sup>21</sup>



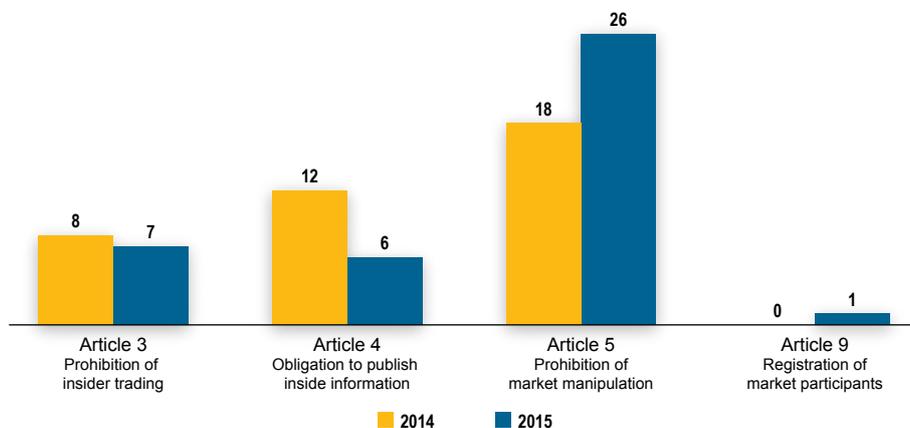
<sup>177</sup> In 2015, the number of cases reported by entities without legal obligations to do so (namely whistle-blowers and other market participants) increased significantly, most likely due to the growing awareness of REMIT as the implementation progressed.

<sup>178</sup> In the coming years, the Agency expects further increases in the number of cases under review, supported by the surveillance activity that it has been conducting since the start of data collection.

<sup>179</sup> From the 33 new cases reported to or detected by the Agency in 2015, the majority involved a potential breach of the prohibition to manipulate the markets followed by the prohibition of insider trading and the obligation to disclose inside information. This is depicted in the following figure.

<sup>21</sup> Including all cases sent/received by the Agency in the course of the year.

Figure 12: Types of Potential Breaches in New Cases Reported to/by the Agency in 2014 and 2015<sup>22</sup>



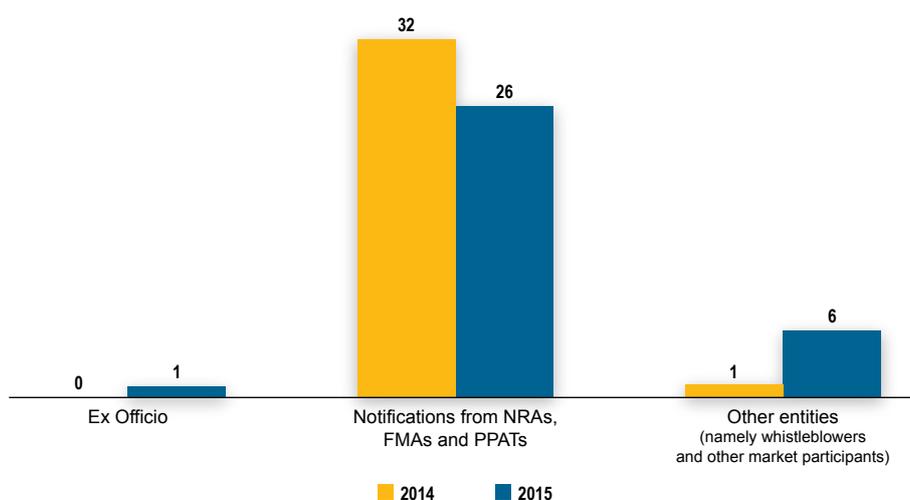
180 While the total number of cases remained the same, the year on year comparison shows an increase in the relative importance of market manipulation among cases reviewed by the Agency.

181 Similarly to 2014, most of the cases under review in 2015 were either notified by NRAs or PPATs under the obligations imposed by Articles 15 and 16 of REMIT respectively. However, the number of potential cases received from other parties (namely whistle-blowers and other market participants) increased significantly in 2015.

182 For the first time, the Agency referred one case (ex-officio) to the relevant NRA on its own initiative as a result of its market monitoring activities under Article 7 of REMIT.

183 Figure 13 provides an overview of the origin of the cases dealt with by the Agency in 2014 and 2015.

Figure 13: Origin of the New Cases Reported to/by the Agency in 2014 and 2015



22 Some cases potentially include the breach of several REMIT provisions.

184 The Agency aims for greater consistency in the application of the obligations included in Articles 15 and 16 of REMIT. With that objective, in 2015, the Agency promoted several policy initiatives to ensure better consistency in the application of these provisions.

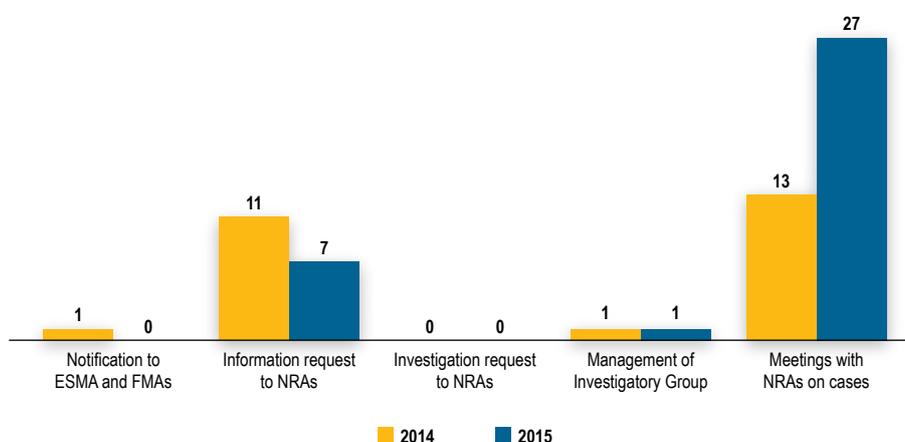
185 In particular, the Agency started the development of a new chapter in the ACER Guidance on the application of Article 15 of REMIT.<sup>23</sup>

186 In 2015, 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.

187 During 2015, despite the lack of adequate resources, the Agency increased its efforts to coordinate cases by following up on case developments with the NRAs. Throughout the year, the Agency sent seven requests for information to the NRAs, and organised 27 meetings and conference calls to discuss cases.

188 In order to ensure a coordinated and consistent application of REMIT, in certain cross-border cases, the Agency, under Article 16(4)(c), established and coordinated investigatory groups consisting of representatives of the concerned NRAs. At the beginning of 2015 the Agency closed one investigatory group and opened a new one. The cooperation within the investigatory group created in 2015 has been very intense and since the start of the group more than 30 interactions between ACER and the relevant NRAs have been registered with several analyses and reports being produced by the group.

Figure 14: Case Activities by the Agency in 2015 (including activities related to cases opened in previous years)



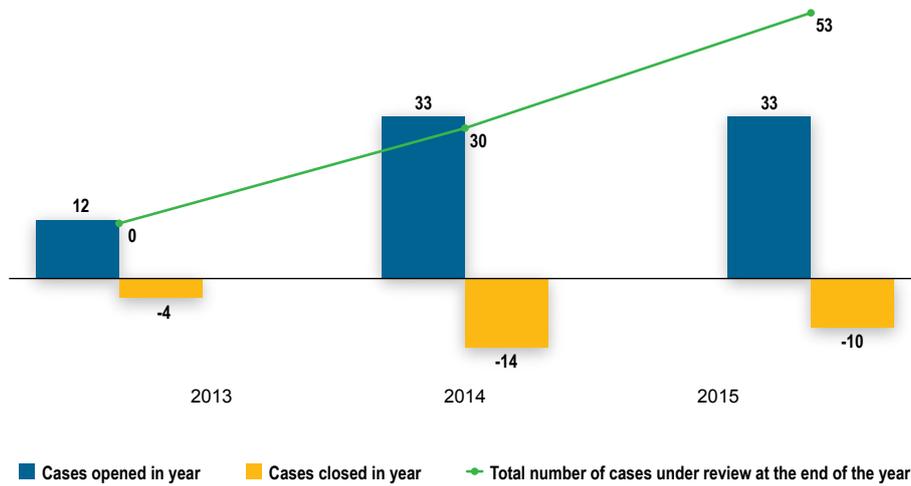
189 The number of pending cases has increased by almost 80 percent year on year. Thirty cases were under review at the end of 2014, 33 new cases were reported to or detected by the Agency in 2015 and 10 cases were closed during 2015. As a result, by the end of the year 53 cases were still under review or investigation. This is shown in Figure 15.

190 Over the past few years the number of cases opened has been consistently higher than the number of cases closed. This may point to an insufficient level of resources by NRAs to enforce REMIT.

23 More information on the topic can be found in section 3.2.1.

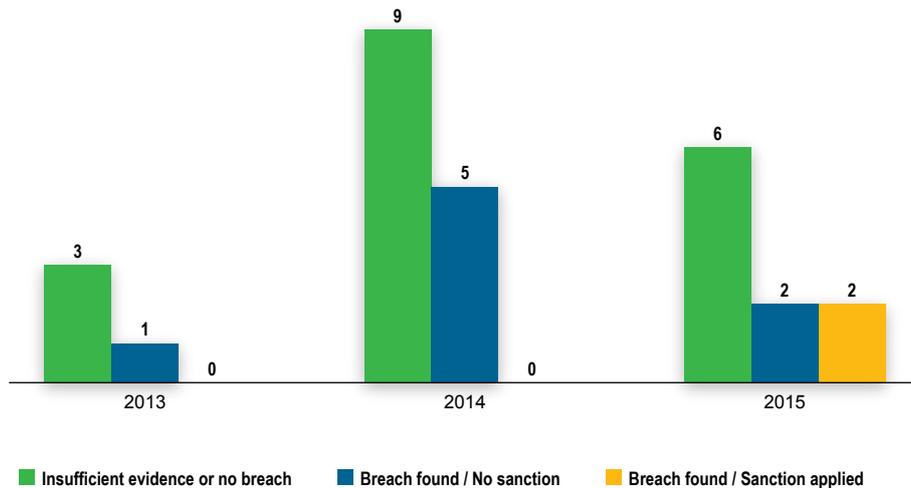
191 Taking into consideration its own limitations in terms of resources, the Agency undertakes a comprehensive review of the cases classified as high priority. For the remaining cases, the Agency prioritises at its discretion, making every effort to ensure that the minimum legal requirements are met.

Figure 15: Number of Cases opened, closed and under Review by the Agency at the End of 2015



192 During 2015, one case from 2013, five from 2014 and four from 2015 were closed. Out of the 10 cases closed, the competent authority concluded in six occasions that there was insufficient evidence or no breach; in two that a breach was found but no formal sanction was applied; and in a further two that a breach was found and the authority applied a monetary sanction. More details on these two cases are presented at the end of this section.

Figure 16: Cases closed in 2013, 2014 and 2015



193 The year of 2015 was a landmark for the application of REMIT, not only because of the start of data reporting, but also because the first two monetary sanctions for breaches of REMIT prohibitions/obligations were applied.

## Box 1 – Enforcement in 2015: two case studies

### Case study from Estonia

On 4 November 2015, the Estonian Competition Authority fined an Estonian company 10000 EUR for non-compliance with Article 4 obligations. According to the regulator, the Estonian company did not inform the market in a timely manner - after a Board Meeting - about maintenance work on a subsea electricity cable that links Estonia to Finland, which would disrupt the supply for a longer period than initially expected. On 20 November 2015, the Estonian company appealed the decision of the Competition Authority in the Estonian County Court. The County Court found that according to the internal procedures of the company it is not the Board but the Power Control Center that approves conditions of outages and the publishing of the urgent market messages. The County Court found that the decision of the Board meeting for allowing the EstLink 2 outage was not precise enough – as required by Article 2(1) of REMIT – for publishing an urgent market message. After the approval of the Power Control Center, Estonian company had published an urgent market message within 60 minutes. The County Court ruled that the activity of Estonian company was in accordance with Article 4(1) of REMIT. On 8 April 2016, the Estonian Competition Authority appealed the County Court decision in the Supreme Court. Finally, the Supreme Court decided to uphold the ruling of the County Court.

### Case study from Spain

On 24 November 2015, the Spanish NRA (CNMC) fined a Spanish company, for a breach of Article 5 of REMIT. According to CNMC, the Spanish company manipulated the electricity day-ahead prices over three weeks starting from 30 November 2013 by bidding hydroelectric power plants at prices that do not reflect the opportunity costs of these generation units. CNMC argued that the Spanish company intended to benefit from the economic withdrawal of these units by putting its gas-fired power plants into the money and influencing subsequent auctions. The fine applied was 25 million EUR and the market participant appealed the Decision. In its appeal Spanish company argued innocence, and that the imposed sanctions were based exclusively on a breach of Article 60(a)(15) of the Spanish Act 54/1997 on the Electricity Industry and not on a breach of REMIT. The case is currently pending a Court Decision.

### 3.4.3 Illustrative Case Reviews

<sup>194</sup> In a continuous effort to promote transparency while supporting the compliance efforts of market participants, the examples below describe closed cases where the Agency's staff undertook case reviews in 2015 in close cooperation with NRAs.

1. Potential market manipulation: A market participant strongly decreased its purchase volumes on two hourly products compared to the rest of the day. The low purchase volumes during these hours caused a decrease in prices compared to the level expected with the usual orders, hence leading the prices for those two hours to be at levels that were not generally justified by market fundamentals. It was concluded that the low purchase volumes were due to an error in the market participant's internal system, which aggregates all the positions on its different portfolios. The error was detected by the market participant after the publication of the auction results and it took immediate actions to balance its position. The market participant did not benefit from these transactions and implemented measures to prevent such events from occurring again in the future. The NRA informed the Agency that in the absence of reasonable grounds to suspect a REMIT breach the case had been dismissed.
2. Insider trading, improper disclosure of inside information and obligations of PPATs: A Market participant was in possession of information that could classify as inside information one hour before the closing of the order book for an auction of cross border capacity. Its bidding behaviour on the auction of cross border capacity was consistent with the fact that the information was used to trade, taking into consideration the price level of the bids (abnormal compared to that of other market participants and to the bidding areas price spread) as well as the timing and changes of the bids. The information was disclosed to the market only after the closing of the order book. For the purpose of investigating the case and to promote cooperation, ACER established a cross border investigatory group. Under ACER coordination, the group met regularly and exchanged documents and strategies on critical investigatory steps. When these transactions took place, the relevant NRAs did not have sanctioning powers under REMIT implemented at national level. The case was therefore dismissed on those grounds and the market participants received a written warning. The auction organiser did not report the suspicious orders in line with Article 15 of REMIT. ACER decided to promote a better understanding on the interpretation of Article 15 of REMIT and developed a new Chapter in the ACER Guidance (4th ACER Guidance to the NRAs).
3. Insider trading: A market participant published information related to the failure of a gas turbine valve tightness test in a CCGT plant. Before disclosing the event on the platform for the disclosure of inside information, the market participant bid on an intraday platform. The analysis of the NRA found that the market participant was using information, which met the criteria of inside information (defined in Article 2(1) of REMIT) and traded while in possession of that information. The exception laid out in Article 3(4) of REMIT was not applicable. The NRA concluded that the market participant was in breach of Article 3 of REMIT. The damage to the market was estimated to be of negligible magnitude. According to the national law, for its enforcement decision, the NRA can take into account whether the market participant significantly damaged the interest of others and ceased the infringement. Based on its analysis the NRA decided to issue a warning without imposing penalties to the market participant for the breach of Article 3 of REMIT.

### 3.4.4 Notifications of delayed disclosure of inside information and coverage of an immediate physical loss resulting from unplanned outages

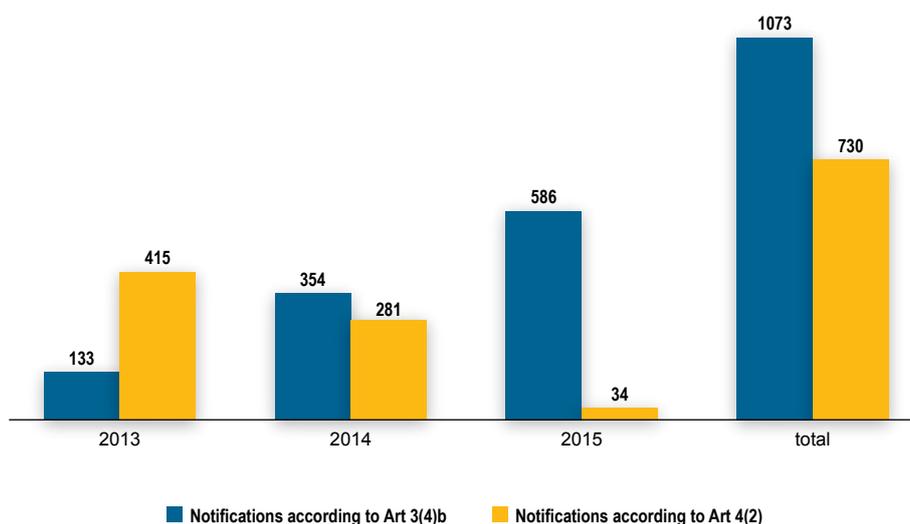
<sup>195</sup> Since 28 December 2011, in order to assist those market participants who are subject to the obligations in Article 3(4)(b) and Article 4(2) of REMIT<sup>24</sup>, the Agency has developed a standard notification form, based on the experiences of similar concepts in financial markets, and 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.

<sup>196</sup> Analysis of the notifications of both types of exemption suggests that a considerable number of notifications are not completed correctly, mostly related to incomplete data. Under Article 3(4)(b) of REMIT it is a specific requirement that the transactions entered into as a consequence of the inside information are fully specified on the form. When applying Article 4(2) of REMIT, the market participant needs to submit a justification for the delayed disclosure.

<sup>197</sup> Moreover, the Agency is concerned that the purpose of Article 3(4)(b) of REMIT is not fully understood by some market participants. This is based on the fact that a considerable number of notifications received originate from a small number of market participants and that in many such cases no related transactional data is included, perhaps indicating that no such related transactions took place. In this respect the Agency would like to clarify that the purpose of Article 3(4)(b) of REMIT is not to allow the disclosure of ad-hoc information.

<sup>198</sup> Figure 17 below shows the evolution of notifications according to Articles 3(4)(b) and 4(2) of REMIT from 2013 to 2015. The number of notifications according to Article 4(2) of REMIT declined steeply in 2015. In 2016 the Agency will follow-up on notifications according to Article 3(4)(b) of REMIT, in collaboration with the relevant NRAs.

Figure 17: Breakdown of Notifications under Articles 3(4)(b) and 4(2) of REMIT Submitted to the Agency from 2013 to 2015



<sup>24</sup> Articles 3(4)(b) and 4(2) of REMIT provide for 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. These exemptions can only be applied under a limited scope. In all of these cases, however, the appropriate information should be reported to the Agency and the relevant NRA without delay. See also section 2.5.3.

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

### 3.5.1 Introduction

<sup>199</sup> The Agency's assessment of the operation of OMPs and ways of trading has been restrained by two factors up to date. First of all, data reporting obligations did not take effect until 7 October 2015 for market participants entering into transactions in OMPs, and until 7 April 2016 for other ways of trading. An assessment of the operation of Organised Market Places and ways of trading cannot be made without this data. Secondly, in the time leading up to these milestones, a significant amount of the Agency's resources had been devoted to delivering a timely and effective implementation of REMIT.

<sup>200</sup> As with the 2015 Annual Report, these factors mean that this year's report will concentrate mainly on an assessment of transparency. However, in contrast with previous years and in respect of the Agency's obligations under Article 7(3) of REMIT, some preliminary analyses on the collected data are presented in this section. A short summary of its monitoring actions and some additional content regarding the assessment of transparency of the markets are presented in the section below.

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

#### 3.5.2.1 Introduction

<sup>201</sup> According to Article 7(3) of REMIT, the Agency shall annually assess the operation and transparency of different categories of OMPs and ways of trading. Since the Agency will have a full set of data for 2016 on OMPs and at least 9 months of data for other ways of trading, due to the reporting obligation of market participants, it will be able to present a more extensive operational assessment in next year's Annual Report. Consequently, the assessment in this year's report is largely based on public sources and secondary information, similar to the exercise in previous years. However, the current Annual Report on REMIT activities in 2015 also provides a preliminary assessment of the data collected since 7 October 2015.

<sup>202</sup> In addition to the Agency's annual report on its activities under REMIT, the Agency and CEER publish 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 complement and refer to each other where appropriate.

#### 3.5.2.2 Wholesale energy market segments and products

<sup>203</sup> Trading in wholesale energy products (electricity and natural gas) occurs either on OMPs (exchanges or brokers) or on a bilateral basis. The contracts can either be standardised and admitted to trading at OMPs, or non-standardised contracts traded bilaterally. Transactions carried out at energy exchanges are anonymous and screen-traded. Transactions outside energy exchanges can be cleared (and are considered OMP) or bilaterally settled (not considered OMP); in both cases they can be handled via voice and screen. The core products of energy exchanges include day-ahead, intra-/within-day spot contracts, in the 'forward time frame' physical forwards (transactions for deferred delivery), and derivatives contracts such as futures, swaps and options.

- 204 As a rough estimation, in 2015, 64 % of all traded electricity in the major EU markets<sup>25</sup> was traded bilaterally or via brokers. Around 22 % was represented by long-term (physical and financial) exchange contracts. Finally, approximately 14 % of electricity was traded via spot contracts<sup>26</sup>.
- 205 For natural gas trading, excluding individual long-term contracts through which gas is imported into the Union and which does not change ownership at any recognised trading hubs, about 72 % of all traded natural gas quantities are traded via bilateral contracts or via brokers. Over 27 % of gas trading is represented by financial (future and option) contracts traded on exchanges. Finally, about 1 % of all traded quantities are traded via spot contracts on exchanges<sup>27</sup>.
- 206 Wholesale electricity and natural gas markets involve both physical and financial elements. Physical products are those whose contracts involve the physical delivery of natural gas or electricity over an agreed period of time. Physical market participants are those who are in the market to make or take delivery of the commodity. Spot and physical forward contracts are contracts for physical delivery over an agreed period, for electricity usually in standardised profiles, e.g. 'base load', 'peak load', 'off-peak' etc. and for natural gas usually for 'base load'.
- 207 Financial products do not in the majority of cases involve the delivery of gas or electricity; rather they involve the exchange of money. Purely financial Over-The-Counter (OTC) transactions are normally offered at a fixed price for an agreed quantity of energy to be notionally delivered over some future period. They are priced against a published daily/hourly natural gas/electricity price, and settled at the end of the notional delivery period with a cash payment equal to the difference between the average of the daily/hourly gas/electricity price during the period and the fixed price originally agreed upon.
- 208 Some of the OMPs within the Union operate both in the physical and financial markets, whilst other OMPs operate in only one of the two market segments. Depending on the trading venue, financial settlement may be made daily during the period of delivery, or monthly, based on net transfers during the previous calendar month.
- 209 Table 1 illustrates the main market segments in the physical and financial wholesale energy markets.

■ Table 1: Market segments of wholesale energy markets

Market Segments	
Physical markets	Financial markets
Balancing markets	Derivatives markets
Spot markets	- Financial forwards
- Intraday or within-day products	- Futures
- Day-ahead products	- Swaps
- Week-end and block products	- Options
- Other longer term spot contracts <sup>28</sup>	
Physical forward markets (transactions for deferred delivery)	

25 France, Germany, Italy, the Netherlands, Spain, the Nordic region, the UK.

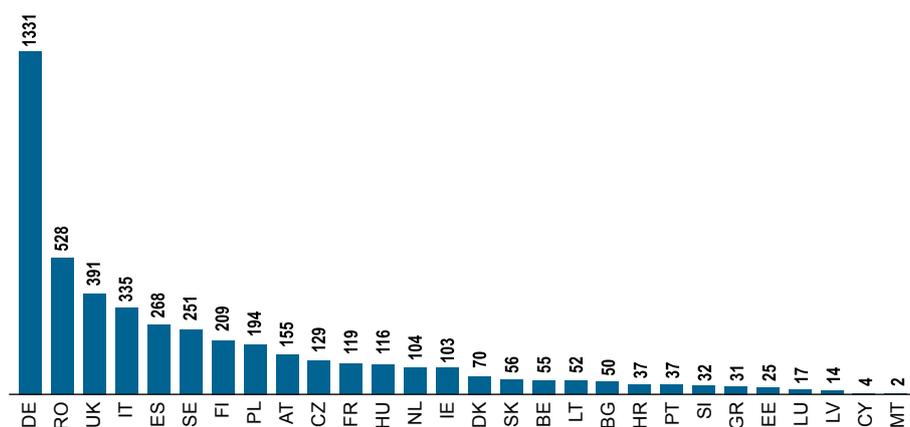
26 Source: Prospec Research Ltd. 2016. European Power Trading 2016, March 2016.

27 Source: Prospec Research Ltd. 2015. European Gas Trading 2015, September 2015.

28 'The period generally accepted in the market for that commodity, asset or right as the standard delivery period', as defined by article 38(2) of Commission Regulation (EC) No 1287/2006.

- 210 When trading bilaterally or via brokers, it is common to use so-called standard master agreements that set out standard terms applicable to all the transactions made between the parties. Each time a transaction is entered into, the terms of the master agreement apply automatically. The master agreement permits the parties to quickly negotiate subsequent transactions or agreements, because they can rely on the terms of the master agreement, so that the same terms do not need to be repetitively negotiated. Apart from the European Federation of Energy Traders (EFET) master agreements for electricity and natural gas, some additional master agreement are known for natural gas, such as the NBP 1997, 'short-term flat NBP trading terms and conditions', the ZBT 2004, 'Zeebrugge hub natural gas trading terms and conditions', and the ISDA Master Agreement.
- 211 Overall, the number of market participants in the Union's wholesale energy market has been increasing over the last number of years. This is partly because (i) greater transparency makes energy markets more understandable, comprehensible and reliable and (ii) a higher degree of market integration between national and regional markets in principle leads to an increase in market activity and a larger number of trading participants compared to that of isolated markets.
- 212 At the end of 2015 there were just over 4700 registered market participants in the European Register of Market Participants<sup>29</sup>. The division per country of registration on 31 December 2015 is presented in the figure below.

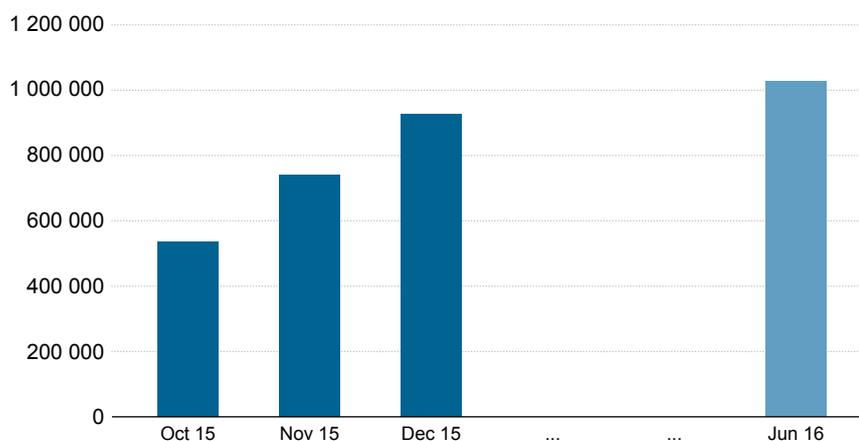
Figure 18: Number of registered market participants per country of registration on 31 December 2015



- 213 Since 7 October 2015, the Agency has been collecting data for all orders and trades that arise from activity on Organised Market Places and fundamental data from the ENTSOs' central information transparency platforms. On 7 April 2016 reporting started on transactions in the remaining wholesale energy contracts and reportable fundamental data from TSOs, LSOs and SSOs.
- 214 Although they only represent a limited timeframe, the first figures already give some indication of the amount of data the Agency collects. This reflects the volumes that the wholesale energy market in the Union is handling. By the end of 2015, RRM had submitted 503 191 contracts, 15007 257 trades and 50731 129 orders. The graph below presents the average number of orders, trades and contracts per day. These numbers are logically increasing over time.

29 By September 2016 this number increased to over 11,000.

Figure 19: Approximate average daily volumes of transaction records collected by ACER in 2015 for the months of data collection



<sup>215</sup> The transaction records encompass orders, trades and contracts. The evolution is logically upwards since more data are being collected with time. The data show the vast number of records on which the Agency applies its data analysis. The numbers of transactions exceed the prudent estimations the Agency had made in its original assessment and in its 2015 Work Programme. First estimations were of 500 000 records.

<sup>216</sup> The data can be reported by approved RRMs. In February 2016 there were 37 approved RRMs and by June 2016 this had risen to 102. The numbers consist of third-party RRMs as well as market participants, including TSOs, SSOs and LSOs. Numerous RRM applications are currently being processed.

<sup>217</sup> At the end of 2015, the Agency was managing more than 700 RRM applications, mostly from self-reporting market participants, for the next stage of data collection<sup>30</sup>. Due to the vast amount of RRM applications and limited resources, the Agency performs the registration of self-reporting market participants on a best effort-basis. RRM registrations of third-party RRMs, TSOs, SSOs and LSOs were prioritised since they are reporting data for numerous market participants. Given that the RRM registration process typically takes at least three months, the Agency expects those RRM applicants who were not in the final testing stage of the RRM registration process by end-2015 to rely on third-party RRMs.

<sup>218</sup> Next year's annual report will be looking into a full year of data collection and will provide additional insight in the evolution of these numbers.

### 3.5.2.3 Wholesale Electricity Markets

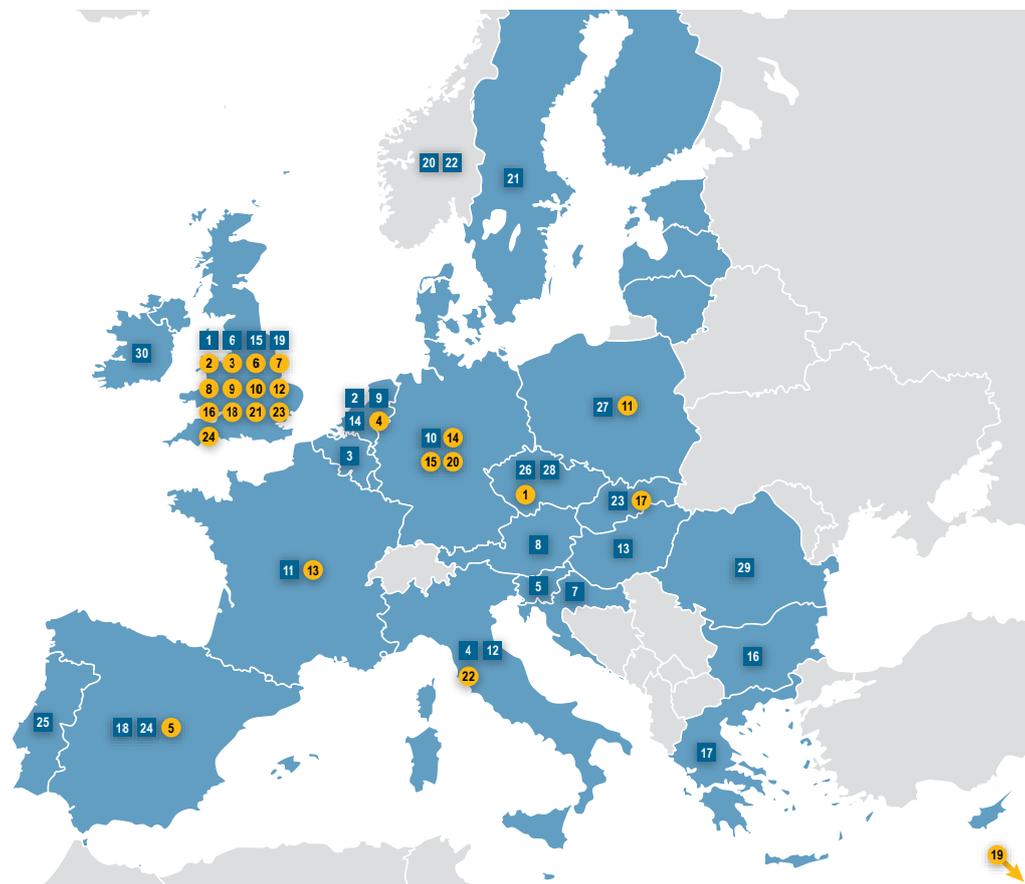
<sup>219</sup> Apart from legislation or policy developments directly related to REMIT, other policy developments will also impact the functioning of wholesale electricity markets in the Union. For background information on these developments, the reader is referred to the Agency's Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2015.

<sup>30</sup> By mid-2016 this amount already exceeded 1300.

### Market structure development and traded volumes

220 The following map illustrates the electricity exchanges and brokers that were registered as Organised Market Places with the Agency up to end of August 2016<sup>31</sup>.

Figure 20: Overview of electricity exchanges and brokers in Europe in 2015 (source: ACER Database)<sup>32</sup>



#### ■ – EXCHANGES

- 1 – APX Commodities Ltd
- 2 – APX Power B.V.
- 3 – Belpex NV
- 4 – Borsa Italiana IDEM market - IDEX segment
- 5 – BSP d.o.o.
- 6 – CME Europe Limited
- 7\* – Croatian Power Exchange Ltd. (CROPEX)
- 8 – Energy Exchange Austria, EXAA
- 9\* – ETPA B.V.
- 10 – European Energy Exchange, EEX AG
- 11 – European Power Exchange, EPEX SPOT
- 12 – Gestore dei mercati energetici – GME
- 13 – Hungarian Power Exchange Ltd., HUPX
- 14 – ICE Endex Derivatives BV
- 15 – ICE Futures Europe
- 16\* – Independent Bulgarian Energy Exchange (IBEX)
- 17 – LAGIE SA
- 18 – MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A.
- 19 – N2EX/Nord Pool Spot AS

- 20 – Nasdaq OMX Oslo ASA
- 21 – Nasdaq OMX Stockholm AB
- 22 – Nord Pool Spot AS
- 23 – OKTE, a.s.
- 24 – OMIE, OMI-Polo Español, S.A.
- 25 – OMP - Pólo Português, S.G.M.R., S.A.
- 26 – OTE, a.s.
- 27 – Polish Power Exchange, POLPX
- 28 – Power Exchange Central Europe, PXE a.s.
- 29 – Romanian gas and electricity market operator, OPCOM S.A.
- 30 – Single Electricity Market Operator, SEMO

#### ● – BROKERS

- 1 – 42 Financial Services a.s.
- 2 – ARRACO GLOBAL MARKETS LTD
- 3 – BGC Brokers L.P.
- 4 – CommErg B.V.
- 5 – Corretaje e Información Monetaria y de Divisas Sociedad de Valores SOCIEDAD ANONIMA, CIMD SV

- 6 – Enterprise Commodity Services Limited
- 7 – GFI Brokers Limited
- 8 – Griffin Markets Limited
- 9 – ICAP Energy AS
- 10 – ICAP Energy Limited
- 11 – InfoEngine S.A.
- 12 – Marex Spectron International Limited
- 13 – OTCex SA
- 14 – Ovovis GmbH
- 15 – POWER SPRINTER GmbH
- 16 – Shard Capital Partners LLP
- 17 – SPX, s.r.o.
- 18 – TFS Derivatives Ltd
- 19 – Tradition (Dubai) Ltd\*\*
- 20 – Tradition Financial Services (Finacor Deutschland GmbH)
- 21 – Tradition Financial Services Ltd
- 22 – Tradition Italia SRL
- 23 – Tullett Prebon (Europe) Limited
- 24 – Tullett Prebon (Securities) Limited

\* Started to operate in 2016

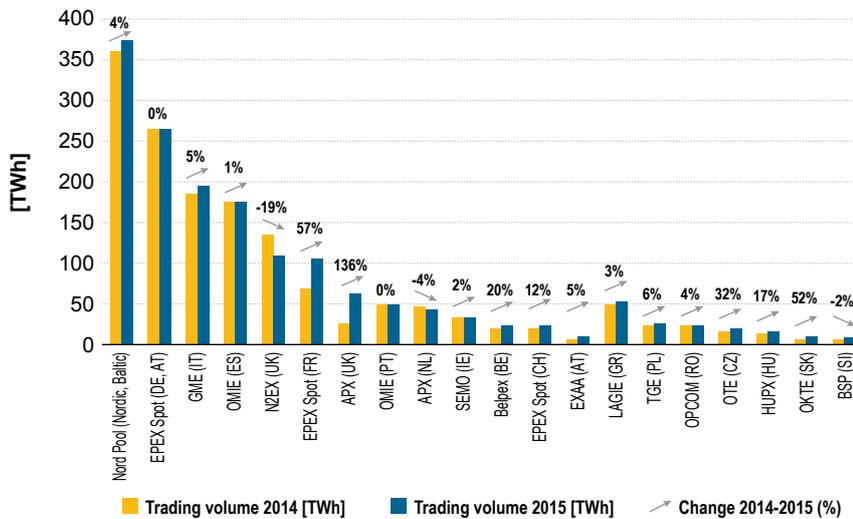
\*\* United Arab Emirates

31 Since Norwegian exchanges offer products in the Member States of the Union, they are listed.

32 Please note the current table only lists Market Places registered as OMP with the Agency. The actual situation might have changed in the meantime.

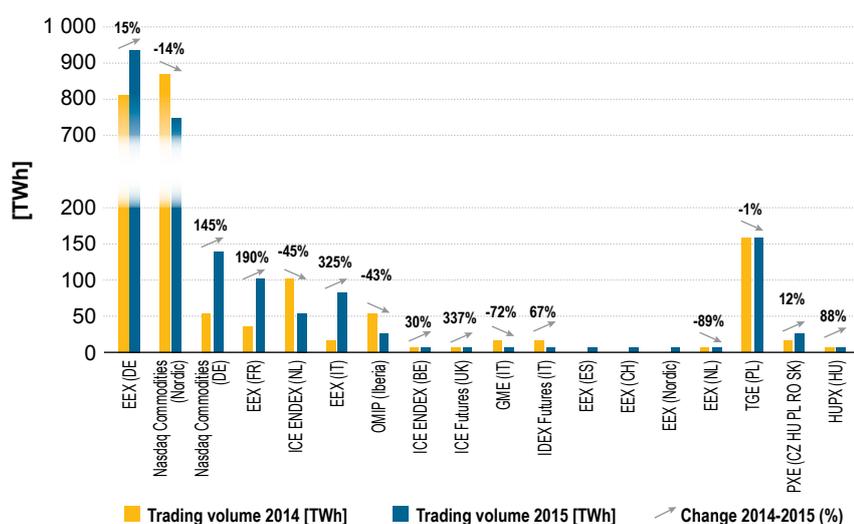
221 The figure below shows the traded spot volumes on several power exchanges active in the Union in 2014 and 2015, along with the yearly volume change (2014-15). The western exchanges are depicted in the left part and the eastern in the right part of the figure. Total spot volumes at the presented exchanges rose by 6 % in 2015, the largest growth is with APX (UK). Nord Pool Spot – Nordic and Baltic remains the largest spot market in the Union, also increasing its trading volume over the year 2015. The trading volumes at the eastern exchanges are also growing with further growth expected as more exchanges in this part of the Union started to operate at the beginning of 2016, namely Cropex in Croatia and Ibex in Bulgaria. The five top ranked exchanges together reached over 70 % of the total spot trading volume of all listed exchanges. These are Nord Pool (Nordic and Baltic), EPEX Spot, GME, OMIE, and N2EX.

Figure 21: Spot trading volumes on power exchanges in Europe 2015<sup>33</sup>



222 The figure below shows the traded ‘forward time frame’ consisting of physical forwards (transactions for deferred delivery) and derivatives contracts such as futures, swaps and options on several power exchanges active in the Union in 2015, divided into western (left part of the figure) and eastern markets (right part of the figure). Total ‘forward time frame’ volumes at these exchanges rose by 6 % in 2015. EEX and NASDAQ dominate the western markets. The five top ranked exchanges together reached more than 90 % of the total spot trading volume of all listed exchanges. These are EEX (Germany), Nasdaq Commodities (Nordic), Nasdaq Commodities (Germany), EEX (France), and TGE (Poland).

33 Source: Prospec Research Ltd. 2016. European Power Trading 2016, March 2016

Figure 22: Forward timeframe volumes on power exchanges in Europe 2015<sup>34</sup>


### Traded products - overview

223 The table below provides an overview of the different products offered at the various power exchanges active in the Union and the geographical markets covered by exchanges in 2015.

■ Table 2: Overview of geographical markets and traded products covered by European power exchanges (source: ACER Database)

No	Electricity Exchange Name	Geographic market	Intraday	From Day-ahead until Weekend ahead	Long-term
1	APX Commodities Ltd	UK		✓	
2	APX Power B.V.	BE, NL, UK	✓	✓	
3	Belpex NV	BE	✓	✓	
4	Borsa Italiana IDEM market - IDEX segment	AT, DE, IT, LU			✓
5	BSP d.o.o.	SI	✓	✓	
6	CME Europe Limited	AT, DE, ES, FR, IT, LU, NL, PT, UK		✓	✓
7*	Croatian Power Exchange Ltd. (CROPEX)	HR		✓	
8	Energy Exchange Austria, EXAA	AT, DE, LU		✓	
9*	ETPA B.V.	NL	✓	✓	
10	European Energy Exchange, EEX AG	AT, BE, DE, DK, EL, ES, FI, FR, IT, LU, NL, RO, SE, UK, NO, CH		✓	✓
11	European Power Exchange, EPEX SPOT	AT, DE, FR, LU, CH	✓	✓	

34 Source: Prospex Research Ltd. 2016. European Power Trading 2016, March 2016  
 Note: EEX-Spain, EEX-Switzerland and EEX-Nordic were launched on 16 February 2015 and consequently no volumes were traded in 2014. Therefore, it is also not possible to calculate the volume change in percentage from 2014 to 2015.

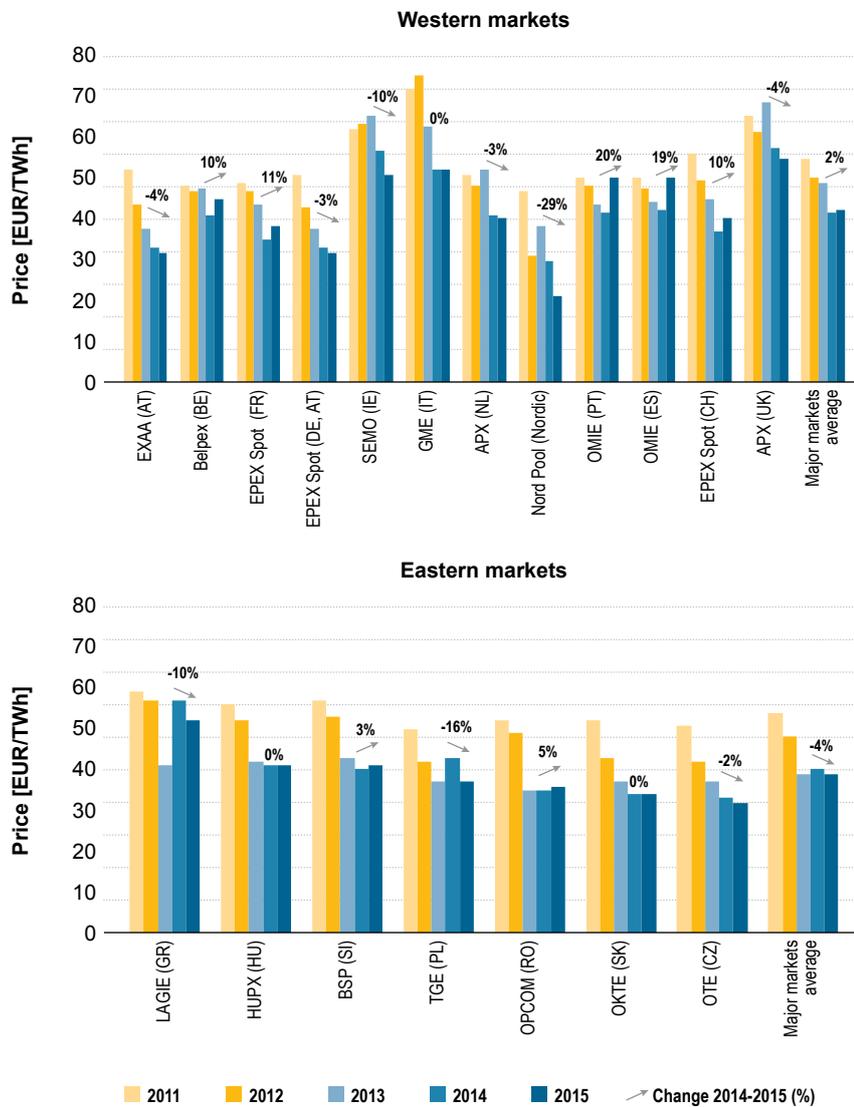
No	Electricity Exchange Name	Geographic market	Intraday	From Day-ahead until Weekend ahead	Long-term
12	Gestore dei mercati energetici – GME	IT	✓	✓	✓
13	Hungarian Power Exchange Ltd., HUPX	HU	✓	✓	✓
14	ICE Endex Derivatives BV	AT, BE, DE, ES, FR, IT, LU, NL		✓	✓
15	ICE Futures Europe	UK			✓
16*	Independent Bulgarian Energy Exchange (IBEX)	BG		✓	
17	LAGIE SA	EL		✓	
18	MEFF Sociedad Rectora del Mercado de Productos Derivados, S.A.	ES		✓	✓
19	N2EX/Nord Pool Spot AS	UK	✓	✓	
20	Nasdaq OMX Oslo ASA	BE, DE, DK, ES, FI, FR, IT, NL, SE, UK, NO		✓	✓
21	Nasdaq OMX Stockholm AB	AT, DE, DK, FI, LU, SE, UK, NO		✓	✓
22	Nord Pool Spot AS	BE, DE, DK, EE, FI, LT, LV, SE, NO	✓	✓	
23	OKTE, a.s.	SK	✓	✓	
24	OMIE, OMI-Polo Español, S.A.	ES, PT	✓	✓	
25	OMIP - Pólo Português, S.G.M.R., S.A.	ES, PT	✓	✓	✓
26	OTE, a.s.	CZ	✓	✓	
27	Polish Power Exchange, POLPX	PL	✓	✓	✓
28	Power Exchange Central Europe, PXE a.s.	CZ, HU, PL, RO, SK		✓	✓
29	Romanian gas and electricity market operator, OPCOM S.A.	RO	✓	✓	✓
30	Single Electricity Market Operator, SEMO	IE	✓	✓	

\*Note: Started to operate in 2016

## Prices

<sup>224</sup> The figure below illustrates the evolution of yearly averages of electricity spot prices in the major western and eastern electricity markets for the period of 2011–2015, and the percentage change from 2014 to 2015. On average, the prices on western exchanges rose by 2% in 2015, which was the first increase since 2011. The highest average prices were observed in the UK, Ireland and Italy, and the lowest in Germany, Austria and the Nordic region. Meanwhile prices fell by 3% in the eastern exchanges, following the downward trend of the last five years. Greece, Slovenia and Hungary noted the highest average prices, while Slovakia and the Czech Republic had the lowest prices.

Figure 23: Yearly averages of spot (day-ahead) prices over last 5 years at major western/eastern energy exchanges<sup>35</sup>



35 Source: Prospex Research Ltd. 2016. European Power Trading 2016, March 2016

### 3.5.2.4 Wholesale Gas Markets

<sup>225</sup> Apart from legislation or policy developments directly related to REMIT, other policy developments will also affect the functioning of wholesale gas markets in the Union. For background information on these developments, the reader is referred to the Agency's Annual Report on the Results of Monitoring the Internal Electricity and Natural Gas Markets in 2015.

#### Market structure development and traded volumes

<sup>226</sup> There has been a rapid increase in the development of gas hubs and gas markets in the Union over recent years. Member States import 70 % of natural gas from outside the Union. In the Union's natural gas supply portfolio Russian gas has a share of around 30%, followed by Norway and Algeria. LNG imports represent more than 12 % of Union supplies. Less than 30 % of the overall gas supply is domestic, and this is expected to drop below 20 % by 2030.

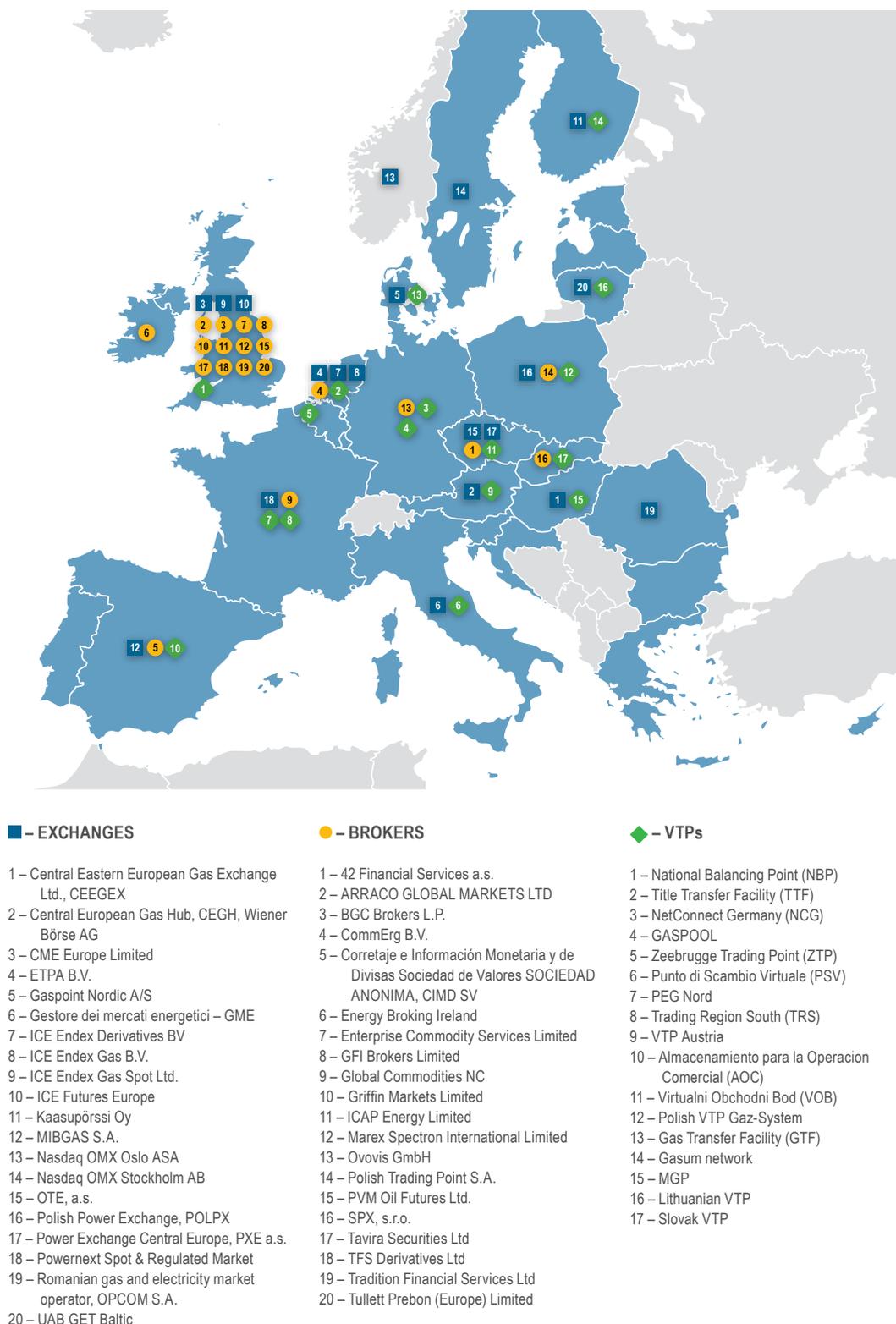
<sup>227</sup> The supply of gas for the majority of Member States are bilateral long-term contracts (e.g. 20 or more years). In recent years, elements in the price formulas of those contracts have shifted away from oil-based to incorporate gas hub prices. Such contracts are used for the import of gas from Russia, Norway, and Algeria and may include certain specific clauses (e.g. take-or-pay obligations).

<sup>228</sup> EU gas consumption increased in 2015 to 4 650 TWh, which is the first increase after four years of decline. The decreasing gas price since 2013 allowed for some recovery of the economics of gas-fired power plants, at least in Spain, Italy and the UK.

<sup>229</sup> Furthermore, enhanced market integration has allowed for a more important role of gas hubs and will likely lead to their continued development over the coming years. The following map illustrates major natural gas exchanges and brokers that were registered as Organised Market Places with the Agency up to end of August 2016<sup>36</sup>. It contains also major virtual trading points (VTPs) operating within the Union.

<sup>36</sup> Since Norwegian exchanges offer products in the Member States they are listed.

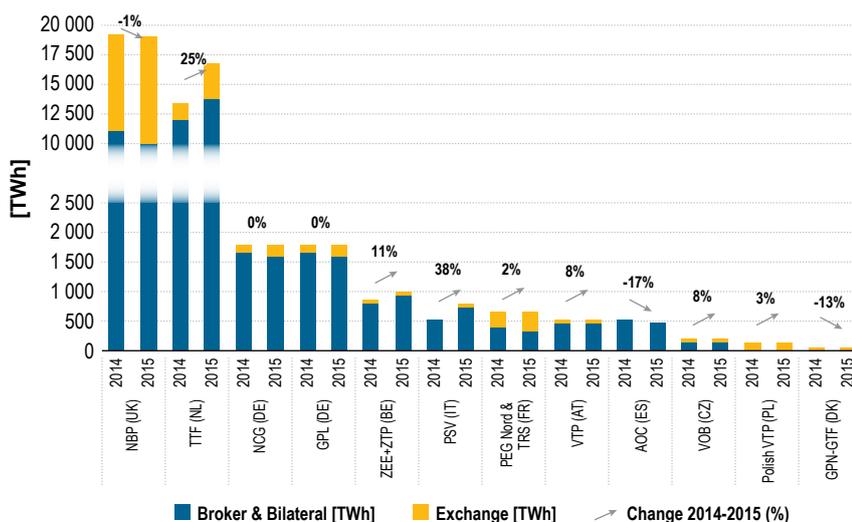
Figure 24: Overview of major natural gas exchanges, brokers and virtual trading points (VTPs) operating in Europe in 2015 (source: ACER Database)<sup>37</sup>



<sup>37</sup> Please note the current table only lists Market Places registered as OMP with the Agency. The actual situation might have changed in the meantime.

230 Figure 25 shows the development of traded volumes on major gas hubs in the Union. The traded volumes for 2014 and 2015 are shown broken down into the quantities traded on exchanges and OTC for each single natural gas hub. In addition, the percentage change between 2014 and 2015 is indicated. The figure clearly shows the two largest hubs in terms of the traded quantity of natural gas, followed by considerably lower amounts on other natural gas hubs in the Union. In 2015 hub traded volumes increased by approximately 9 % on a yearly average basis.

Figure 25: Traded volumes on natural gas hubs (exchange and brokers & bilateral) in Europe in 2015<sup>38</sup>



231 The natural gas hubs TTF and PSV show substantial growth. Although NBP's quantities decreased, it remains the largest gas-trading hub in the Union. Brokering and bilateral trading remain the most common trading mechanism, although the role of exchanges is strengthening in recent years, especially in Poland (98 % of the volumes traded on exchanges), Denmark (61 %), the UK (50 %) and France (45 %).

38 Source: Trayport, Hub operators, NRAs, and ACER Database  
 Note: For Spain data include also physical swaps and bilateral deals outside an Organised Market Place at a price reference.

## Traded products

<sup>232</sup> The table below provides an overview of the different products offered at the various natural gas exchanges active in the Union and the geographical markets covered by those exchanges in 2015.

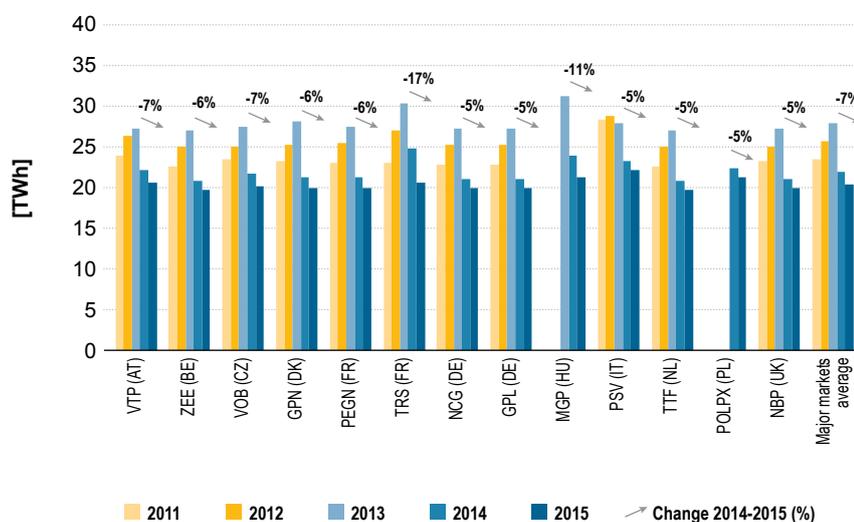
**Table 3: Overview of geographical markets and traded products covered by European gas exchanges (source: ACER Database)**

No	Natural gas Exchange Name	Geographic market	Intraday	Spot	Long-term
1	Central Eastern European Gas Exchange Ltd., CEEGEX	HU	✓	✓	✓
2	Central European Gas Hub, CEGH, Wiener Börse AG	AT, CZ	✓	✓	✓
3	CME Europe Limited	AT, DE, IT, NL, UK		✓	✓
4	EPTA B.V.	NL	✓	✓	
5	Gaspoint Nordic A/S	DK	✓	✓	✓
6	Gestore dei mercati energetici – GME	IT	✓	✓	✓
7	ICE Endex Derivatives BV	BE, DE, IT, NL		✓	✓
8	ICE Endex Gas B.V.	BE, NL	✓	✓	
9	ICE Endex Gas Spot Ltd.	UK		✓	
10	ICE Futures Europe	UK		✓	✓
11	Kaasupörssi Oy	FI	✓	✓	✓
12	MIBGAS S.A.	ES	✓	✓	✓
13	Nasdaq OMX Oslo ASA	BE, DE, DK, ES, FI, FR, IT, NL, SE, UK, NO		✓	✓
14	Nasdaq OMX Stockholm AB	AT, DE, DK, FI, LU, SE, UK, NO		✓	✓
15	OTE, a.s.	CZ	✓	✓	
16	Polish Power Exchange, POLPX	PL	✓	✓	✓
17	Power Exchange Central Europe, PXE a.s.	CZ, HU, PL, RO, SK		✓	✓
18	Powernext Spot & Regulated Market	BE, DE, FR, IT, NL		✓	✓
19	Romanian gas and electricity market operator, OPCOM S.A.	RO	✓	✓	✓
20	UAB GET Baltic	LT	✓	✓	

## Prices

<sup>233</sup> Weak gas demand, oversupply in the global market leading to a.o. diversion of LNG to the Union's shores, weak oil prices and changing gas contracting terms played an important role in decreasing wholesale gas prices across the Union in 2015.

<sup>234</sup> The figure below shows the Italian PSV average price is the highest (22.14 EUR/MWh) and the Belgian ZEE average price is the lowest (19.68 EUR/MWh) in 2015. The spread between them is 2.46 EUR/MWh. Since 2011, prices generally decreased and converged more.

Figure 26: Yearly averages of spot (day-ahead) prices over last 5 years at major European Natural Gas Trading Hubs/Exchanges<sup>39</sup>

### 3.5.3 Assessment of the Transparency of Different Categories of Market Places

#### 3.5.3.1 Introduction

<sup>235</sup> Transparency is essential for well-functioning wholesale energy markets. The most efficient allocation of productive resources is achieved when market participants respond to price signals which truly reflect supply and demand fundamentals. Where information relevant to efficient price formation is withheld from the market, or not released in a timely manner, the efficiency of decisions about when and where to trade is impaired, potentially leading to higher energy bills for gas and electricity consumers.

<sup>236</sup> Article 4 of REMIT aims to increase transparency in wholesale energy markets by obliging market participants to publish inside information in an effective and timely manner. 'Inside information' is defined in Article 2(1) of REMIT as information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products.

<sup>237</sup> Further guidance of these concepts is provided in Chapter 5 of the third (updated) edition (and also in the 4<sup>th</sup> Edition) of the non-binding Guidance on the application of REMIT. The chapter concludes that the notion of 'inside information' should be understood primarily as:

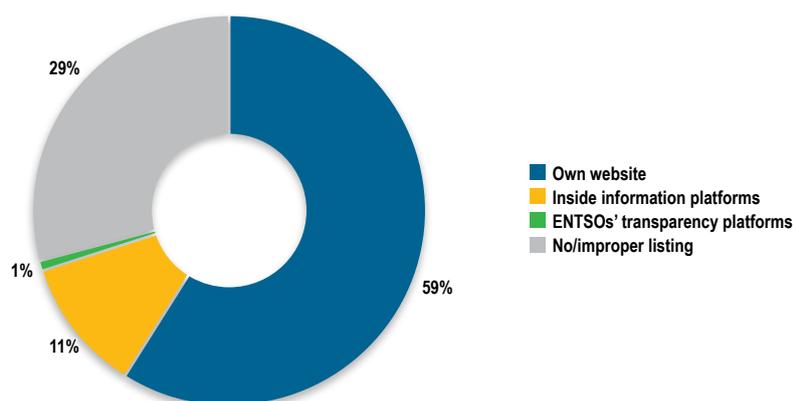
- information which is required to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, including guidelines and network codes adopted pursuant to those Regulations, which also encompasses information referred to in the Commission Regulation (EU) No 543/2013;
- information relating to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities; and
- information which is required to be disclosed in accordance with other legal or regulatory provisions at Union or national level, insofar as this information is likely to have a significant effect on the prices of wholesale energy products.

<sup>39</sup> Source: Prospec Research Ltd. 2015. European Gas Trading 2015, September 2015, Hub operators, ACER Database

238 The important role that Organised Market Places play in the effective disclosure of inside information is highlighted in Chapter 7 of the Guidance. Inside information can be disseminated in different ways, such as company websites or dedicated platforms. Although not fully covering the same purpose, the ENTSOG and ENTSO-E transparency platforms are also used to make transparency information<sup>40</sup>, linked to TSO operation, available to the market. ENTSOG's current Transparency platform started to operate in October 2014 while ENTSO-E's current Transparency platform started in January 2015. The transparency page of Gas Infrastructure Europe (GIE), which offers fundamental data reporting on the EU gas storage data for every Member State also contributes to the transparency reporting.

239 The figure below provides an indication of the level of platform utilisation for the disclosure of inside information among registered European wholesale market participants. The figure is based on market participants' listed inside information publication channels provided to the Agency at the time of registration. It indicates that a majority of market participants do not presently use platforms for the disclosure of inside information. The total number of registered market participants at the very end of 2015 was just over 4700.

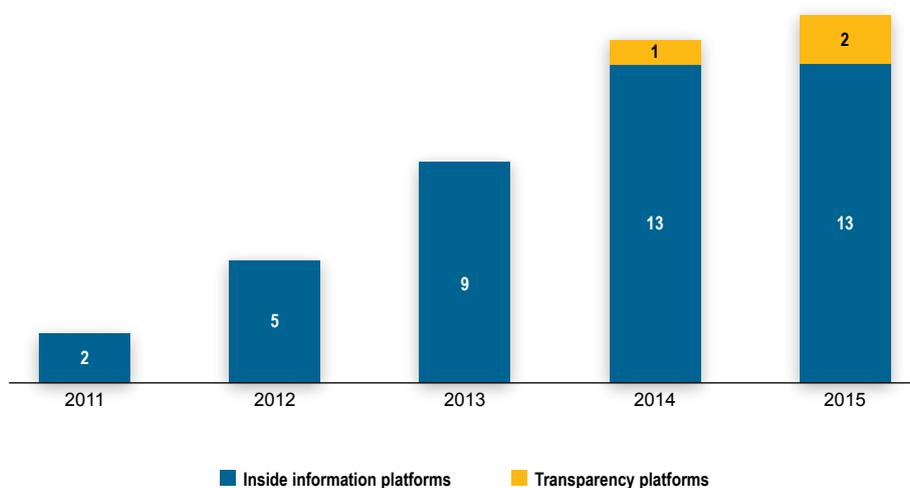
Figure 27: Inside Information publication channels among registered market participants (source: ACER Database)



240 As the disclosure of inside information via dedicated platforms offers significant advantages to market participants, in January 2015 the Agency decided to publish on the REMIT Portal a list of platforms available for the disclosure of inside information. 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 period 2011 – 2015.

<sup>40</sup> For the distinction between inside and transparency information, please refer to the ACER Guidance on the application of REMIT.

Figure 28: Number of platforms for disclosure of inside information and Transparency platforms 2011-2015



<sup>241</sup> The number of operational platforms for the disclosure of inside information increased significantly between 2012 and 2014. However, in 2015 the expansion slowed with no new platforms launched. A new platform was launched in Italy in January 2016, bringing the total number of platforms that the Agency is aware of to 14 (until September 2016).

<sup>242</sup> As Organised Market Places can improve transparency by offering data reporting platforms, the number of available platforms is significant, but it is of secondary importance to the level of platform utilisation and geographical coverage. In theory, a relatively small number of platforms could improve wholesale market transparency if all wholesale market participants in the Union had access to them and used at least one of them. Currently, this is not the case.

<sup>243</sup> The following figures illustrate, for electricity and gas respectively, the geographical coverage of the operational platforms for the disclosure of inside information.

Figure 29: Countries covered by Platforms for the Disclosure of Inside Information in Electricity Markets in 2015

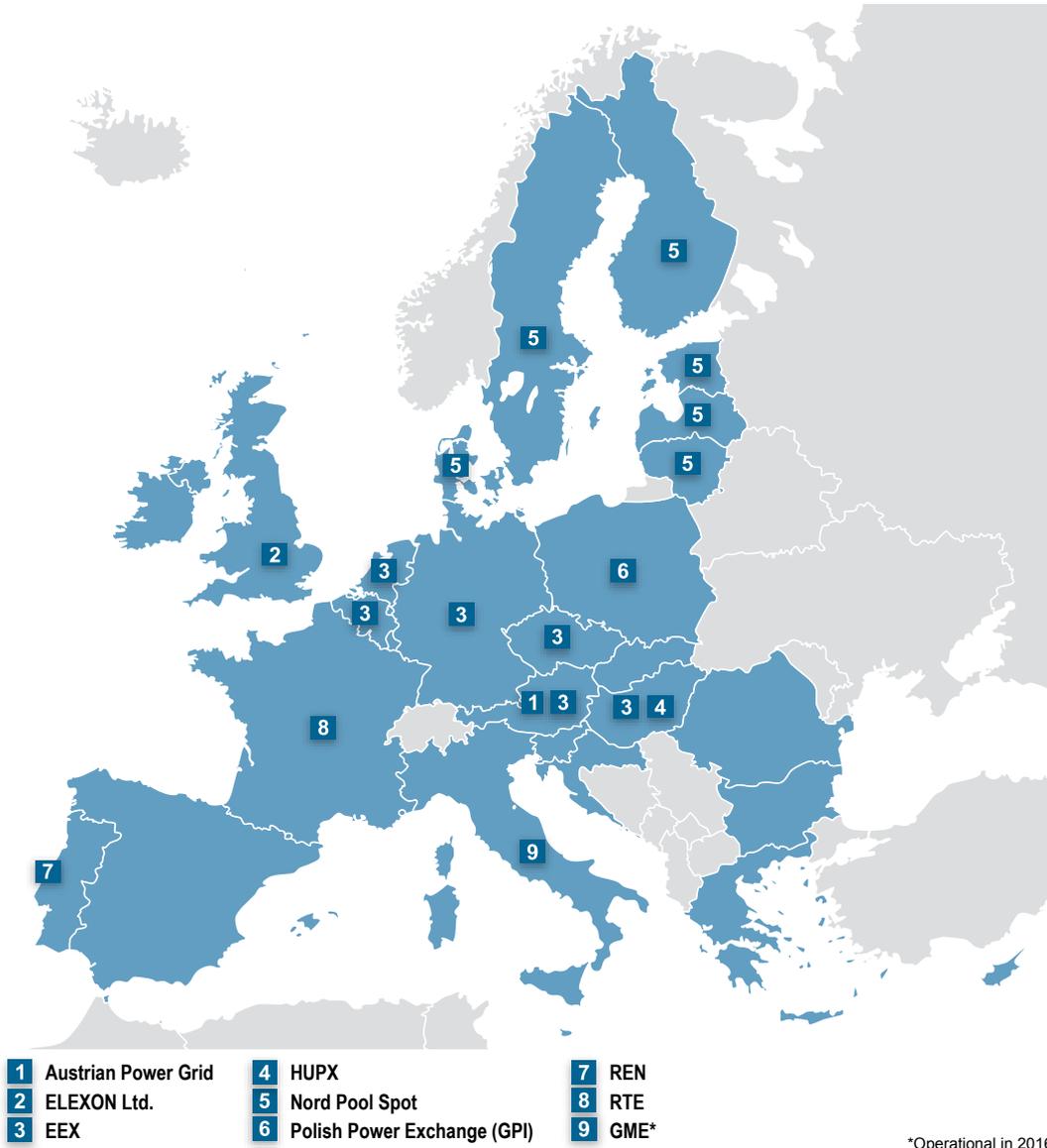
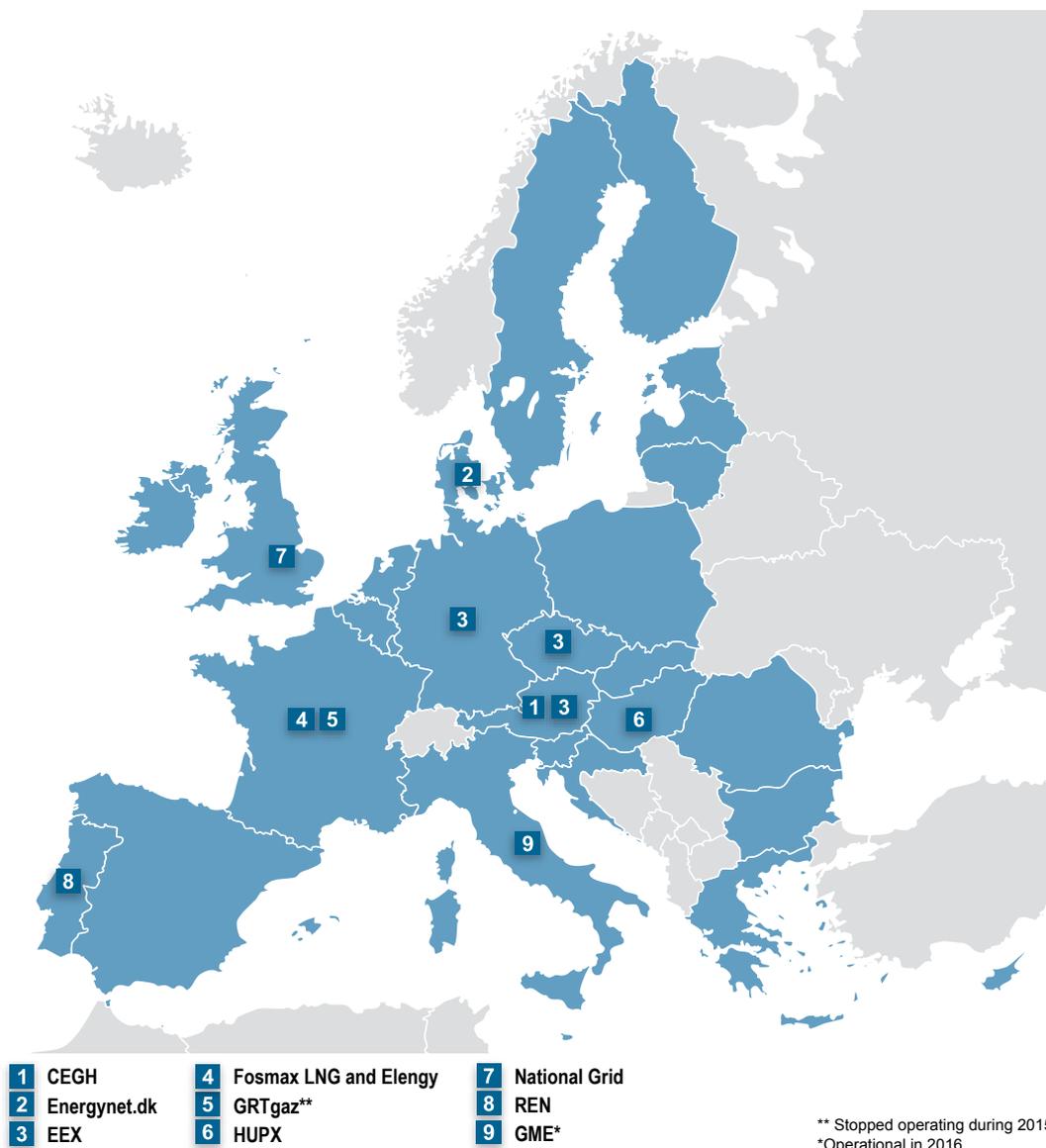


Figure 30: Countries covered by Platforms for Disclosure of Inside Information in Natural Gas Markets in 2015<sup>41</sup>



<sup>244</sup> The figures indicate that in 2015, 16 Member States out of 28 were covered by platforms for the disclosure of inside information related to the electricity markets. In some cases, one single country was covered by multiple platforms. For example, an outage in Hungary can be reported to the platform operated by EEX or to the one operated by HUPX.

<sup>245</sup> For gas markets only 7 out of 28 Member States have access to platforms for the disclosure of inside information. As noted above, a new platform was launched in Italy in January 2016 by GME. This platform allows for the disclosure of inside information in both gas and electricity markets. Nevertheless, significant gaps remain in southern and eastern Union Member States in both sectors, and in the Benelux Member States for gas.

<sup>41</sup> Note: National Grid has moved its platform for disclosure of Inside Information in Natural Gas to GB REMIT <https://www.remit.gb.net/>. That platform is not new, since data on it have been published since the beginning of 2013.

<sup>246</sup> From the data presented it is clear that, despite significant growth in the availability of platforms for the disclosure of inside information between 2012 and 2014, the use of platforms for the disclosure of inside information by all gas and electricity wholesale market participants remains some way off an optimal level. In Member States where platforms do not exist, the publication of inside information on company websites remains an adequate alternative. Nevertheless, the Agency encourages the use of platforms for the disclosure of inside information and the development of new platforms in Member States where none exist, or where possible, the expansion of existing platforms to other Member States.

<sup>247</sup> In chapter 7 of the 3<sup>rd</sup> updated Edition of Guidance of the application of REMIT, published 3 June 2015 (and also in the 4<sup>th</sup> Edition) the Agency laid down its current understanding of the obligation to disclose inside information in accordance with Article 4. Amongst other points, it highlights the minimum IT requirements in order to ensure an effective disclosure of inside information and the mandatory content of the urgent market messages (chapter 7.2.2).

### 3.5.3.2 Case study for market participant incumbents

<sup>248</sup> The Agency performed an initial study of the fulfilment of the 'Minimum IT requirements' and the quality of the content of the 'Urgent Market Message' for producer and TSO incumbents for electricity and natural gas. They were tested against fulfilment of each individual requirement and the findings are presented in the following sub-sections. At this stage the identities of the incumbents remain undisclosed. Five incumbents were chosen each time among four different groups of market participants which are:

- Electricity producers
- Electricity TSOs
- Natural gas producers
- Natural gas TSOs

## Box 2 – Electricity producer incumbents

The selected electricity producer incumbents disclose inside information on their own website, on a public platform for the disclosure of inside information or on a combination of both.

The overall fulfilment of IT requirements is satisfactory. One of the five incumbents does not fulfil the criterion regarding the availability of data for a period of at least two years. The prevention of conflicts of interest with market participants is not applicable to those incumbents who publish the inside information on their own websites or portals. Four of the five incumbents fulfil 100 % of the applicable requirements and one is fulfilling 80 % of them.

None of the incumbents meets the complete list of requirements related to the content of the Urgent Market Messages. The causes for them not fully meeting the requirements are diverse.

To summarise, incumbents 2 and 3 report 92 % of the Urgent Market Message content, while incumbent 1 reports 85 % of the message content. The lowest score was reached by incumbents 4 and 5, which report 77 % of the Urgent Market Message content.

■ Table 4: Fulfilment of the IT requirements and the content of the Urgent Market Message criteria for 5 electricity producer incumbents

Electricity producers (Incumbents)						
No.	IT Requirements for the effective disclosure of inside information (ACER Guidance)	Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Shall be disclosed to the public on a non-discriminatory basis and free of charge	✓	✓	✓	✓	✓
2	Shall be made available via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public	✓	✓	✓	✓	✓
3	Shall be kept available for the public for a period of at least 2 years	✓	✓		✓	✓
4	Should be published in the official language(s) of the relevant Member State and in English or in English only	✓	✓	✓	✓	✓
5	Minimal unavailability consistent with market expectations shall be ensured	✓	✓	✓	✓	✓
6	Effective administrative arrangements designed to prevent conflicts of interest with market participants shall be ensured (applicable only for platforms)	✓	n.a.	n.a.	✓	✓

Electricity producers (Incumbents) Publication according to Article 4(1) of REMIT – Urgent Market Message (ACER Guidance)						
No.		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Subject heading summarising the main content of the publication	✓	✓	✓	✓	✓
2	Time and date of publication	✓	✓	✓	✓	✓
3	Time and date of the relevant incident	✓	✓	✓	✓	✓
4	Name and location of the asset concerned	✓	✓	✓	✓	✓
5	The fuel concerned	✓	✓	✓	✓	✓
6	Market area concerned		✓	✓	✓	✓
7	Affected capacity of the asset concerned	✓	✓	✓	✓	✓
8	Available capacity of the asset concerned	✓	✓	✓		
9	Estimated time at which the assets concerned will be partly/or wholly available again	✓	✓	✓	✓	✓
10	Reasons for the unavailability of the asset concerned	✓	✓	✓	✓	✓
11	If the reason(s) for the unavailability is/are not known, regular updates should be provided until the reason(s) is/are confirmed					
12	If applicable, a history of prior publications regarding the same event, e.g. if a prognosis is updated or an unplanned outage becomes a planned outage	✓	✓	✓	✓	✓
13	Any other information necessary for the reader to understand the relevant information	✓	✓	✓		

### Box 3 – Electricity TSO incumbents

The five electricity TSO incumbents disclose inside information on the ENTSO-E transparency platform (in line with Regulation 543/2013) and on their own website. The fulfilment of the criteria was tested with regards to data on planned maintenances and failures inside the electrical transmission grid, which are published under the 'Outages' section on the ENTSO-E transparency platform. All incumbents report on 'Planned' and 'Forced' Outages. If any point of the criteria was not fulfilled it was checked whether it is provided on the incumbents' website.

Three incumbents fulfil 100 % of the IT requirements, and two fulfil 83 %. Those two do not fulfil the obligation to keep data available for at least two years. Although the ENTSO-E transparency platform has existed for less than two years, three incumbents publish data for a longer period.

The fulfilment of the complete content of the Urgent Market Messages is not of the same quality for all of the incumbents. The columns 'Fuel concerned' and 'Affected capacity of the asset concerned' do not apply to TSOs' data. As the affected capacity of a certain power line cannot be defined other than the outage of a complete line, the data regarding the available capacity of the asset concerned is sufficient. Moreover, to the knowledge of the Agency, criterion 11 is not fulfilled by any of the selected incumbents and criterion 12 only by one. In conclusion, four out of five TSO incumbents fulfil 82 % of the UMM content and one fulfils 91 %.

Investigating for data disclosure outside the ENTSO-E platform is not that straightforward for all incumbents. This is because the incumbents are not disclosing the data in a very effective or easy-to-find way.

Although the affected capacity of the asset concerned may not apply to the publication due to the complexity of its estimation, it has to be stressed that some of the related transparency data, e.g. the Net Transfer Capacity values related to non-Flow-Based Market Coupling<sup>42</sup> borders are not being published at all under the Transmission section on the ENTSO-E Transparency Platform. However, this is exceeding the scope of the current case study. Further analysis will be performed in collaboration with the respective NRAs.

42 Flow-Based Market Coupling (FBMC) is now being used in the Central West Europe region as an alternative to the Net Transfer Capacity (NTC) allocation and calculation model. The key idea behind the FBMC method is that commercial capacity is not determined border-by-border by the TSOs ahead of allocation but is the outcome, at regional level, of the allocation and calculation process itself. With the introduction of FBMC, publication of NTC is not relevant anymore, since the concept of NTC is replaced by the concept of Remaining Available Margin (RAM) on relevant Critical Branches (CB). These CBs can also be situated inside a bidding zone and do not solely cover cross-border lines.

■ Table 5: Fulfilment of the IT requirements and the content of the Urgent Market Message criteria for 5 electricity TSO incumbents<sup>43</sup>

Electricity TSOs (Incumbents) IT Requirements for the effective disclosure of inside information (ACER Guidance)						
No.		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Shall be disclosed to the public on a non-discriminatory basis and free of charge	✓	✓	✓	✓	✓
2	Shall be made available via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public	✓	✓	✓	✓	✓
3	Shall be kept available for the public for a period of at least 2 years	✓	✓		✓	
4	Should be published in the official language(s) of the relevant Member State and in English or in English only	✓	✓	✓	✓	✓
5	Minimal unavailability consistent with market expectations shall be ensured	✓	✓	✓	✓	✓
6	Effective administrative arrangements designed to prevent conflicts of interest with market participants shall be ensured (applicable only for platforms)	✓	✓	✓	✓	✓

Electricity TSOs (Incumbents) Publication according to Article 4(1) of REMIT – Urgent Market Message (ACER Guidance)						
No.		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Subject heading summarising the main content of the publication	✓	✓	✓	✓	✓
2	Time and date of publication	✓	✓	✓	✓	✓
3	Time and date of the relevant incident	✓	✓	✓	✓	✓
4	Name and location of the asset concerned	✓	✓	✓	✓	✓
5	The fuel concerned	n.a.	n.a.	n.a.	n.a.	n.a.
6	Market area concerned	✓	✓	✓	✓	✓
7	Affected capacity of the asset concerned	n.a.	n.a.	n.a.	n.a.	n.a.
8	Available capacity of the asset concerned	✓	✓	✓	✓	✓
9	Estimated time at which the assets concerned will be partly/or wholly available again	✓	✓	✓	✓	✓
10	Reasons for the unavailability of the asset concerned	✓	✓	✓	✓	✓
11	If the reason(s) for the unavailability is/are not known, regular updates should be provided until the reason(s) is/are confirmed					
12	If applicable, a history of prior publications regarding the same event, e.g. if a prognosis is updated or an unplanned outage becomes a planned outage	✓				
13	Any other information necessary for the reader to understand the relevant information	✓		✓	✓	✓

<sup>43</sup> Note: ENTSO-E transparency platform did not yet exist for two years at the time of performing this case study

### Box 4 – Natural gas producer incumbents

Of the five natural gas producer incumbents, some have their production units spread among different member states. All of the five disclose inside information on their own websites; one of them discloses them additionally on one of the platforms.

The fulfilment of the applicable requirements is 100 % for four incumbents. Incumbent 3 does not enable RSS feeds nor does he keep the information available for at least 2 years.

The fulfilment of the complete content of the Urgent Market Message is not reached by any of the natural gas producer incumbents. Only two incumbents provide data regarding the market area or a history on the same event. The analysis also shows requirements 11 to 13 are only met by single incumbents. Requirement 5, i.e. the 'concerned fuel' does not apply to any of the incumbents.

In summary, incumbents 4 and 5 report 83 % of the UMM content, while incumbents 1, 2 and 3 report 67 % of the applicable content.

■ Table 6: Fulfilment of the IT requirements and the content of the Urgent Market Message criteria for 5 natural gas producer incumbents

Natural gas producers (Incumbents)						
IT Requirements for the effective disclosure of inside information (ACER Guidance)						
No.		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Shall be disclosed to the public on a non-discriminatory basis and free of charge	✓	✓	✓	✓	✓
2	Shall be made available via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public	✓	✓		✓	✓
3	Shall be kept available for the public for a period of at least 2 years	✓	✓		✓	✓
4	Should be published in the official language(s) of the relevant Member State and in English or in English only	✓	✓	✓	✓	✓
5	Minimal unavailability consistent with market expectations shall be ensured	✓	✓	✓	✓	✓
6	Effective administrative arrangements designed to prevent conflicts of interest with market participants shall be ensured (applicable only for platforms)	✓	n.a.	n.a.	n.a.	n.a.

Natural gas producers (Incumbents) Publication according to Article 4(1) of REMIT – Urgent Market Message (ACER Guidance)						
No.		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Subject heading summarising the main content of the publication	✓	✓	✓	✓	✓
2	Time and date of publication	✓	✓	✓	✓	✓
3	Time and date of the relevant incident	✓	✓	✓	✓	✓
4	Name and location of the asset concerned	✓	✓	✓	✓	✓
5	The fuel concerned	n.a.	n.a.	n.a.	n.a.	n.a.
6	Market area concerned			✓	✓	
7	Affected capacity of the asset concerned	✓	✓	✓	✓	✓
8	Available capacity of the asset concerned			✓	✓	✓
9	Estimated time at which the assets concerned will be partly/or wholly available again	✓	✓	✓	✓	✓
10	Reasons for the unavailability of the asset concerned	✓	✓		✓	✓
11	If the reason(s) for the unavailability is/are not known, regular updates should be provided until the reason(s) is/are confirmed				✓	
12	If applicable, a history of prior publications regarding the same event, e.g. if a prognosis is updated or an unplanned outage becomes a planned outage		✓			✓
13	Any other information necessary for the reader to understand the relevant information	✓				✓

## Box 5 – Natural gas TSO incumbents

The five natural gas TSO incumbents disclose inside information on the ENTSOG transparency platform. The fulfilment of the criteria was tested with regards to data published in the sections 'Urgent Market Message', 'Planned' and 'Unplanned' 'Interruption of Firm Services', and 'Planned' and 'Actual' 'Interruption of interruptible Capacities'. If any point of the criteria was not fulfilled it was checked whether it is provided on the incumbents' web site.

Notifications for 'Unplanned Interruption of Firm Services' could be found for incumbent 2 only. Notifications for 'Planned Interruption of Firm Services' could be found for incumbents 1, 2, and 5. Notifications for 'Planned Interruption of interruptible Capacities' could be found for incumbents 1 and 5 and for 'Actual Interruption of Interruptible Capacities' notifications were found for incumbents 1, 2, and 3. The evaluation was performed for the existing types of messages.

Regarding the IT requirements, ENTSOG's transparency website did not always render the required information in an effective way. The examined part of the web site has the form of a calendar. The functionalities did not always present the complete requested information. Due to described problems, these arrangements are deemed not to be sufficiently fulfilled. Consequently requirement 5 is treated as fulfilled and requirement 6 as not. Thus for the four incumbents for which the analysis could be performed, the messages on the ENTSOG platform fulfil 83 % of the IT requirements, while Incumbent 4 fulfils 33 %.

The fulfilment of the complete content of the UMMs is inadequate in certain points. Only incumbents 1 and 5 provide the available capacity of the asset concerned, while the additional relevant information is given by incumbent 1 only. The other requirements, except for requirements 11 and 12 are fulfilled by all four incumbents for which the analysis could be made on the ENTSOG platform. Incumbent 1 fulfils 83 %, incumbent 75 %, incumbents 2 and 3 fulfil 67 %, and incumbent 4 fulfils 42 % of all the applicable requirements. When analysing data outside the ENTSOG platform, the appropriate information is often not accessible in an effective manner. The incumbents are not disclosing the data in a very effective or easy-to-find way.

■ Table 7: Fulfilment of the IT requirements and the content of the Urgent Market Message criteria for 5 natural gas TSO incumbents<sup>44</sup>

Natural gas TSOs (Incumbents)						
No.	IT Requirements for the effective disclosure of inside information (ACER Guidance)	Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Shall be disclosed to the public on a non-discriminatory basis and free of charge	✓	✓	✓		✓
2	Shall be made available via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public	✓	✓	✓		✓
3	Shall be kept available for the public for a period of at least 2 years	✓	✓	✓	✓	✓
4	Should be published in the official language(s) of the relevant Member State and in English or in English only	✓	✓	✓		✓
5	Minimal unavailability consistent with market expectations shall be ensured	✓	✓	✓	✓	✓
6	Effective administrative arrangements designed to prevent conflicts of interest with market participants shall be ensured (applicable only for platforms)					

Natural gas TSOs (Incumbents) Publication according to Article 4(1) of REMIT – Urgent Market Message (ACER Guidance)		Inc 1	Inc 2	Inc 3	Inc 4	Inc 5
1	Subject heading summarising the main content of the publication	✓	✓	✓	✓	✓
2	Time and date of publication	✓	✓	✓		✓
3	Time and date of the relevant incident	✓	✓	✓	✓	✓
4	Name and location of the asset concerned	✓	✓	✓	✓	✓
5	The fuel concerned	n.a.	n.a.	n.a.	n.a.	n.a.
6	Market area concerned	✓	✓	✓		✓
7	Affected capacity of the asset concerned	✓	✓	✓		✓
8	Available capacity of the asset concerned	✓				✓
9	Estimated time at which the assets concerned will be partly/or wholly available again	✓	✓	✓	✓	✓
10	Reasons for the unavailability of the asset concerned	✓	✓	✓	✓	✓
11	If the reason(s) for the unavailability is/are not known, regular updates should be provided until the reason(s) is/are confirmed					
12	If applicable, a history of prior publications regarding the same event, e.g. if a prognosis is updated or an unplanned outage becomes a planned outage					
13	Any other information necessary for the reader to understand the relevant information	✓				

44 Note: The ENTSOG Transparency Platform had not existed for 2 years at the time of performing this case study.

## Conclusion

- 249 The Agency hopes that the presentation of such case studies will promote more transparency in the markets and encourage market participants to strictly fulfil all the requirements under REMIT (and other relevant legislation) with regards to the disclosure of inside information. The Agency welcomes the development of transparency and inside information platforms and hopes for their further development and centralisation.
- 250 Depending on available resources, the Agency will follow up further on the presented cases and on the requirements for the disclosure of inside information for the other market participants.

### 3.5.4 Comparison of platforms for the disclosure of inside information

- 251 As indicated in the sections above, the Agency welcomes the further development and use of platforms for the disclosure of inside information. By providing a portal for the standardised submission and dissemination of inside information, platforms help market participants both to effectively discharge their Article 4 obligations under REMIT, and to receive information relevant to their business decisions in the most efficient and timely way.
- 252 Nevertheless, the Agency has observed differences across platforms (and company websites) in the way UMMs are published, with the main differences relating to nomenclature, formats and the level of detail used across platforms. Cosmetic or presentational differences between platforms is not necessarily a problem. However, even small material differences in the way in which data is described can increase complexity and reduce transparency. To facilitate optimisation of the way UMMs are published and presented, the Agency encourages platform operators to consult market participants on their requirements, and to share best practice where possible.
- 253 The Agency further stresses that 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 only some platforms. 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 UMMs. Other forms of data representation, such as the calendar or GANTT view, are also features that may facilitate the use of UMM data.
- 254 A brief qualitative summary of the platforms available in 2015 for both electricity and gas is presented respectively in the information boxes 1 and 2 below. At present, the Agency is aware of nine platforms for the disclosure of inside information for electricity in various Member States of the Union.

## Box 6 – Overview of Current Platforms for the Disclosure of Inside Information for Wholesale Electricity Markets

**NP (Nord Pool)** operates a platform for the disclosure of inside information helping users to comply with both REMIT and the Transparency-related Regulations. It publishes inside information for Nordic and Baltic countries. A large proportion of the UMMs are directly linked to changes in capacity. The NPS website provides web feeds and allows the exporting of messages into excel files. NPS offers the 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 Regulation to ENTSO-E.

**RTE (Réseau de transport d'électricité)** publishes data received from producers and related to unavailabilities of production units located in 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. The first 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 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 Nacionais)** 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. While 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. The format in which inside information is published on the platform has been approved by the British energy regulator.

**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 outages 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 Regulation.

**GME (Gestore Mercati Energetici)** operates, since January 2016, a web portal which enables Italian market participants to submit inside information under REMIT. The functionality of the platform is designed to allow inside information disclosure for both wholesale gas and power markets, but to date only wholesale power inside information disclosures are listed. The website also allows market participants to download data in Xml and CSV formats, as well as subscribe to RSS feeds.

<sup>255</sup> At present, the Agency is aware of eight platforms for the disclosure of inside information for gas in various Member States of the Union.

## Box 7 – Overview of Current Platforms for the Disclosure of Inside Information for Wholesale Gas Markets

**Energinet.dk** provides a platform that allows market participants 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. 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 being 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 those 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 (French Gas TSO)** 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. During 2015 GRTgaz stopped using its dedicated platform and started exclusively publishing UMMs on the ENTSOG Transparency Platform.

**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.

**GME (Gestore Mercati Energetici)** operates, since January 2016, a web portal which enables Italian market participants to submit inside information under REMIT. The functionality of the platform is designed to allow inside information disclosure for both wholesale gas and power markets, but to date only wholesale power inside information disclosures are listed. The website also allows market participants to download data in Xml and CSV formats, as well as subscribe to RSS feeds.

## 3.6 Stakeholder Involvement

### 3.6.1 Public Workshops

<sup>256</sup> The Agency organised one public workshop on REMIT Implementation in 2015, which was also web-streamed. In the light of REMIT reporting which started on 7 October 2015, the 10<sup>th</sup> public workshop on REMIT implementation took place on 8 September 2015. It covered the following topics:

- Update on REMIT implementation and disclosure of inside information
- Registration of third-party Registered Reporting Mechanisms
- REMIT transaction reporting as of 7 October 2015

<sup>257</sup> On the occasion of the public workshop the Agency published its Annual report on its activities under REMIT in 2014.

### 3.6.2 Roundtable Meetings

<sup>258</sup> ACER organised roundtable meetings based on open calls in the beginning of the year with interested stakeholders on REMIT implementation during 2015 while working on the implementation of REMIT and the Implementing Acts.

<sup>259</sup> The main purpose of the roundtables is to listen to the views of, and obtain information from interested stakeholders. Another purpose is to invite attendees to comment on selected questions on data collection and other compliance issues under REMIT and its Implementing Acts.

<sup>260</sup> The roundtable meetings were held for the following stakeholder groups and/or their sub-groups:

- Organised Market Places, trade reporting systems, trade matching systems or other persons professionally arranging transactions.
- Trade Repositories aiming at being registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories<sup>45</sup>.
- Inside Information Platforms and other service providers for the disclosure of inside information on behalf of market participants.
- Associations of market participants.

<sup>45</sup> Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, also referred to as EMIR.

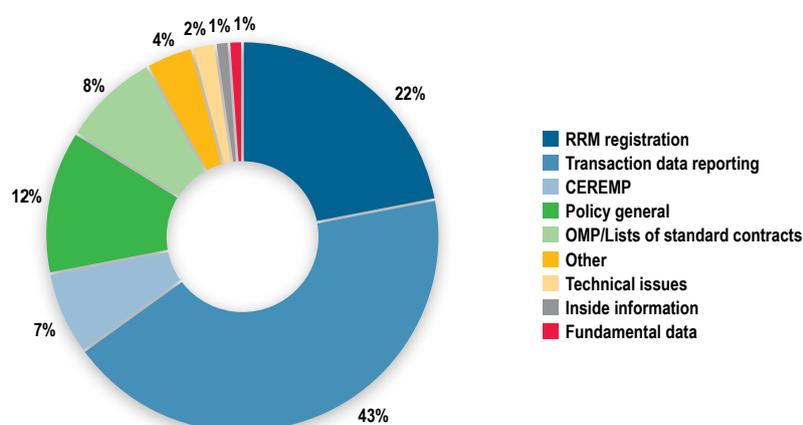
■ Table 8: Information of the topics and the stakeholders in each of the roundtables in 2015

Date	Name	Topics
11-12 March	Roundtable meeting with Organised Market Places, trade reporting systems, trade matching systems or other persons professionally arranging transactions	<ul style="list-style-type: none"> <li>Trading examples not already included in the draft Annex II of TRUM (standard contracts, orders to trade)</li> <li>Other aspects for standardised contracts</li> <li>General update on RRMs registration process</li> </ul>
12 March	Roundtable meeting with Inside Information Platforms and other service providers for the disclosure of inside information on behalf of market participants	<ul style="list-style-type: none"> <li>OMP Registration (overview, capacity allocation platforms, OMP list updating)</li> <li>List of Standard Contracts (purpose of publication, frequency of updates, data formats for submitting reference)</li> </ul>
9 April	Roundtable meeting with Trade repositories aiming at being registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories	<ul style="list-style-type: none"> <li>Access to Trade Repositories Data (legal basis for ACER to access the TRs' data)</li> <li>Technical implementation</li> </ul>
9-10 April	Roundtable meeting with Associations of Energy Market Participants	<ul style="list-style-type: none"> <li>General update on REMIT implementation</li> <li>Non-standard contract examples</li> <li>Q&amp;A to other aspects of non-standard contracts</li> </ul>
11-12 June	Roundtable meeting with Organised Market Places, trade reporting systems, trade matching systems or other persons professionally arranging transactions	<ul style="list-style-type: none"> <li>Trading examples related to broker platforms</li> <li>Trading examples related to exchanges</li> <li>General update on RRMs registration process</li> <li>Standard contracts and organized market places list</li> <li>Trading examples on outstanding questions from participants</li> </ul>
8-9 July	Roundtable meeting with Associations of Energy Market Participants	<ul style="list-style-type: none"> <li>General update on REMIT implementation</li> <li>Non-standard contract examples</li> <li>Other aspects of the REMIT transaction reporting (FAQs on transaction reporting)</li> </ul>
16-17 December	Roundtable meeting with Associations of Energy Market Participants	<ul style="list-style-type: none"> <li>General update on REMIT implementation</li> <li>Reporting of non-standard contracts</li> <li>Other aspects of non-standard contracts reporting</li> </ul>

### 3.6.3 REMIT Queries

<sup>261</sup> In 2015, the Agency received a total of 1643 queries. This figure is 20 times higher than the number of queries received in 2014, when 83 queries were received. As illustrated in Figure 31, the three main categories of queries concern transaction data reporting, RRM registration or general policy issues.

Figure 31: Queries sent to ACER in 2015 on REMIT-related topics



- 262 The majority of the queries received concerned transaction data reporting. In order to provide further guidance on transaction data reporting, the Agency published two editions of Frequently Asked Questions (FAQs) on REMIT Transaction Reporting in 2015. The first edition was published in September and the second in November 2015. Combined they contained a total of 74 queries and answers. The FAQs on REMIT Transaction reporting has been the result of the constant dialogue that the Agency has established with representatives of market participants. All queries and answers included in the FAQs on REMIT Transaction reporting have been previously discussed and agreed with these representatives. The FAQ on transaction reporting was complemented by a FAQ on REMIT fundamental data and inside information collection in early 2016.
- 263 The second and third most addressed topics concerned RRM registration and general policy issues. In order to reply to those queries, the Agency has been collaborating closely with stakeholders. Their feedback and suggestions have been a valuable input to the work of the Agency.
- 264 For responding to the policy queries addressed by REMIT stakeholders the Agency uses the Q&As on REMIT as one of its main tools. The Q&As on REMIT aim to facilitate the interaction with the Agency's stakeholders on REMIT implementation. In 2015, the Agency published 11 editions of the Q&As on REMIT, containing a total of 147 queries and answers. The increased number of published queries reflects the significant increase of queries reaching the Agency through various communication channels.
- 265 The Agency wishes to highlight that it has changed its policy on answering to queries in May 2016. As of 1 May 2016, the Agency will no longer follow up individually on queries concerning documentation which is already published, for instance in the Agency's Q&A or FAQ documents. The Agency considers the automatic reply, which is referring to the relevant documentation, as an answer to the question. The stakeholder can then find all relevant information by reading the already sent holding reply, which contains a comprehensive list of all publicly available documentation on REMIT implementation.

## 4 Conclusions and Recommendations

### 4.1 Conclusions

- 266 Since its establishment in 2009, pursuant to Regulation (EC) No 713/2009, the Agency has been working towards the completion of the single energy market. In addition to this initial objective, the Agency has been assigned new tasks, including those emanating from REMIT, which have substantially widened the mission, role and responsibilities of the Agency.
- 267 REMIT, which entered into force on 28 December 2011, assigned new responsibilities to the Agency in the area of wholesale energy market monitoring. The new tasks differ substantially from the monitoring of the internal market which the Agency has been performing pursuant to Article 11 of Regulation (EC) No 713/2009. In order to perform these tasks, the Agency needs appropriate resources, especially in terms of human resources with specialised expertise.
- 268 Despite a level of resources clearly inadequate to its mandate, which forced the Agency significantly to revise its Work Programme in January 2015 with the deprioritisation of a number of activities, significant progress has been made in the Agency's work to implement and perform its tasks under REMIT.
- 269 The Agency achieved major REMIT milestones in 2015, including those stemming from the entering into force of the REMIT Implementing Acts such as the launch of the REMIT Portal and the RRM registration, the publication of the REMIT Reporting User Package, the launch of the European Register of Market Participants (based on the setting up of national registration systems by NRAs) and the start of data collection, data sharing and monitoring by the Agency. The entry into force of the REMIT Implementing Acts can be seen as the actual starting point of the operational stage. The REMIT Implementing Acts have outlined the timeline for the full application of the new monitoring framework for wholesale energy markets and have triggered several deliverables for the Agency.
- 270 It is clear from the operational phase that a high number of market participants are active and that a large number of transactions, including orders to trade (more than one million per day) occur on the European wholesale energy markets. The Agency is encouraged by the fact that there are a high number of transactions on the Union's energy markets. This is a good basis that can allow for well-functioning, liquid and competitive markets to develop. The volumes of transactions also illustrate the vast work the Agency has in monitoring the market.
- 271 The preliminary analysis performed by the Agency shows that most market participants operate in a noticeably transparent way. However, it is clear that there is still room for improvement in order to have the entire market operating according to the transparency requirements set forth by REMIT. The Agency will continue to work on this issue.
- 272 The few market abuse cases in wholesale energy markets in other parts of the world have clearly shown the benefits of investing in adequate market monitoring. The experience from the Federal Energy Regulatory Commission (FERC) in the United States also proves that market monitoring amply pays for itself by the detection of cases of market abuse costing the market millions of dollars. These numbers only reflect the benefits of detecting cases. The deterring effect of market monitoring, whose benefits cannot easily be quantified, should also be taken into consideration. Compromising on the quality of market monitoring will eventually cost more for the market and, ultimately, for consumers.
- 273 The Agency will continue its remaining REMIT implementation (such as related to the collection of inside information) and operation activities in 2016. It will further enhance its market monitoring and coordination activities. However, efficient and effective market monitoring will depend heavily on the appropriate financial and human resources being made available to the Agency.

## 4.2 Recommendations

- 274 The Energy Union is one of the ten current priorities of the European Commission. 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'<sup>46</sup> sets out the Commission's strategy to achieve such an Energy Union.
- 275 The completion of the internal European electricity and gas markets requires 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 Union.
- 276 Well-functioning energy markets are also instrumental to provide signals to promote security of supply through a cooperative approach throughout Europe. Such a cooperative approach should be based on market-based mechanisms (and only exceptionally on public interventions) and thus rely on the internal market functioning properly.
- 277 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, namely price signals which reflect the demand and supply fundamentals and are not distorted by market abusive behaviour.
- 278 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. Indeed, effective monitoring of energy markets, including of trading in wholesale products, should promote confidence among market participants and European energy consumers that energy prices reflect the interplay of demand and supply and are not distorted by abusive market behaviour.
- 279 The developments in energy market design and those emanating from the implementation of REMIT will affect each other. Therefore, the functioning of the energy market and the application of REMIT cannot be seen as separate matters. A continuous dialogue between legislators, practitioners, regulatory authorities and other stakeholders, both in the area of energy market design and REMIT would ensure that decisions and actions that are made with respect to one area are in line with decisions and actions in the other.
- 280 According to Article 7(3), first subparagraph, of REMIT, the Agency may make recommendations to the Commission as regards market rules, standards and procedures, which could improve market integrity and the functioning of the internal market.
- 281 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 formulates the following recommendations to the European Commission pursuant to Article 7(3) of REMIT.

### Consider the specificities of energy markets in the Union's financial market legislation

- 282 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 promoting effective competition and the security of energy supplies.

<sup>46</sup> 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),

- 283 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 by 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. The core of the implementation of REMIT is now complete following the last major milestone reached on 6 July 2016 (the deadline for the 'back-loading' of non-standard contract reported to the Agency).
- 284 The Agency would like to reemphasize its concern raised in last year's Annual Report that the specificities of energy markets should be taken sufficiently into account in the Union's financial market legislation. This may otherwise result in unintended consequences, which can seriously jeopardise the efficient market integration and security of energy supply that are essential components of the Energy Union strategy. The Agency and ESMA have strengthened their cooperation in 2015 and will continue to do so in the years to come in order to ensure a coordinated approach on wholesale energy markets. The Agency will also aim at better engagement with both ESMA and the Agency when legislative proposals are being developed that have an impact on energy markets.
- 285 Therefore, the Agency recommends that:
- The definition of 'must be physically settled' for C6 energy derivatives is applied as per the Level 2 Delegated Regulation – any additional guidance or national interpretation should not prejudice or contradict the ACER Recommendation No. 1/2015. The Recommendation's main message was that a forward contract that must be settled with a physical delivery should not fall under the scope Annex I C.6 of MifID II.
  - The Commission commits to addressing what is perhaps the greatest concern of the energy sector, in terms of financial regulation, by proposing a bespoke capital requirements regime for firms trading gas and electricity, when they do not pose the same systemic risk to the financial markets as banks and other financial market actors.
  - The Commission works with the Agency, ESMA, national regulators and policy makers to develop an overview of which pieces of Union financial regulation impact on firms in the energy sector and reaches a common understanding on which aspects are likely to help or hinder the development of the Energy Union strategy.

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

- 286 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. This requires adequate resources for NRAs to fulfill their tasks. In addition, Member States were asked to lay down the rules on penalties applicable to infringements of REMIT and to take all measures necessary to ensure that they are transposed by 29 June 2013.

- 287 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 that: '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.'
- 288 Directive 2014/57/EU of 16 April 2014 on criminal sanctions for market abuse (Criminal Sanctions for Market Abuse Directive) 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. The Criminal Sanctions for Market Abuse Directive supplements Directive 2003/6/EC on insider dealing and market manipulation (Market Abuse Directive) and Regulation (EU) No 596/2014 on market abuse (Market Abuse Regulation). It appears that, currently, a similar harmonisation of penalties under REMIT is not sought. 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 national level, and takes any necessary action to ensure effective and efficient enforcement and sanctioning by Member States.

#### Supervision of Registered Reporting Mechanisms

- 289 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 REMIT Implementing Acts. It therefore invites the European Commission to monitor the implementation of appropriate enforcement powers at national level and to consider assigning the Agency enforcement powers with regard to the supervision of RRM. This is comparable to the supervisory role of ESMA for Trade Repositories under EMIR.
- 290 The Agency believes that it is best placed to supervise RRM at European level and their ongoing compliance with the requirements of Article 11(1) of the REMIT Implementing Acts in order to ensure a level playing field amongst RRM and a consistent and coherent approach at Union level.

### Provision of appropriate financial and human resources to the Agency

291 Finally, the full and effective implementation of REMIT requires that the Agency be provided with the appropriate financial and human resources. The Agency has already repeatedly reminded its budgetary authorities of the basic principle established 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'.

292 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 FERC in the US, the Agency has estimated that it requires 45 staff members effectively to implement REMIT and its Implementing Acts. Although a quest for resources has been included in the Agency draft budget every year since 2013, so far only 26 posts have been authorised for the implementation of REMIT – 5 in 2012, 10 in 2013 and 11 (out of 15 assigned to the Agency) in 2016. Therefore, the available resources still fall short of the Agency's estimate of needs for REMIT-related tasks.

293 In this context, the Agency has made an effort internally to reallocate resources and tasks to ensure the implementation of REMIT. The most significant impact of the resource limitations on the Agency's tasks concerns the market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation. For 2015, this was to a large extent mitigated by the fact that the Implementing Acts entered into force later than expected. Other tasks that have consequently been deprioritised or reduced in scope for 2015 were:

- the establishment of appropriate mechanisms to access emission allowances data;
- publication of parts of the trade information the Agency possesses, while protecting commercially sensitive information on individual market participants or individual transactions or individual market places;
- making available the Agency's commercially non-sensitive trade database for scientific purposes, subject to confidentiality requirements;
- assessment of the operation and transparency of different categories of market places and ways of trading in the context of the annual REMIT report (Article 7(3) of REMIT);
- close cooperation and coordination with ESMA, national financial market authorities and, if applicable, competition authorities to ensure a coordinated enforcement of market abuse rules under REMIT and under the Market Abuse Directive.

294 The issue of deprioritisation or scope reduction persists in 2016 and will possibly persist in future years if the resource gap persists. The increase in resources for 2016 does enable the Agency to perform additional tasks compared to 2015. However, it is not sufficient fully to cover the entire REMIT scope. This is particularly true with regards to effective market monitoring of trading activity in wholesale energy markets to detect and prevent trading based on inside information and market manipulation. Indeed, monitoring more than one million records of transactions per day constitutes a formidable challenge and a considerable additional workload.

295 In order to decouple the resources available to the Agency from the subsidy from the Union's budget, the Agency would like to propose that fees are introduced for some of the services the Agency provides under REMIT. The financial resources which would result from the fees could then be used to pay for the additional required staff. Fees are already charged by some other authorities in Member States, as well as by some Union agencies<sup>47</sup>, carrying out similar regulatory activities, which are consequently partly funded through fees.

47 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 market authorities for data collection under Directive 2004/39/EC (MiFID).

- 296 In the case of the Agency, fees could be introduced for the registration and supervision of RRM. Article 11 of the REMIT 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. By the end of 2015, the Agency had received more than 700 applications from reporting parties which intend to become RRM. This is already a substantially larger number of applications than the amount expected by the Commission in 2011 (200 reporting parties in total) and used as one of the references in developing the financial statement for REMIT. At the time of the publication of this Report, the aforementioned numbers of RRM applicants have already doubled.
- 297 The registration of RRM, and the ongoing supervision of their compliance with the technical and organisational requirements and responsibilities for reporting data according to Article 11(1) of the REMIT Implementing Acts, is decisive for ensuring operational reliability according to Article 12(1) of REMIT. However, given its very limited resources, the Agency is currently facing significant difficulties to process RRM applications within the anticipated timeline of up to three months, and to ensure operational reliability for the operational phase of REMIT. At the time of the publication of the report, the Agency has been able to register 107 RRM. The requested resources are therefore essential to ensure that the Agency is able to deal with the RRM applications in a timely manner, while safeguarding operational reliability.
- 298 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 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. It could also contribute to the Agency's supervisory and maintenance costs.
- 299 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 market 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.
- 300 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.
- 301 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 Union Budget, in order adequately to 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

<sup>302</sup> The 2016 Agency Work Programme anticipated the following deliverables in the area of REMIT implementation and operation:

- Operation and further development and, if necessary, enhancements of the Centralised European Register of Energy Market Participants, of the Agency's REMIT Information System for collection of trade, fundamental and other data, and for the data sharing with NRAs.
- 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 REMIT Implementing Acts, and the establishment, development and operation of the Agency's market surveillance solution to perform its market monitoring activity.
- Coordination of NRAs and other relevant authorities, including at regional level, without prejudice to their responsibilities, 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 definitions, and coordination of NRAs' investigation activities on cross-border market abuse.
- 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 applies according to Article 1(3) of REMIT.
- Annual report on the Agency activities under REMIT according to Article 7(3) of REMIT.

<sup>303</sup> However, due to the limited additional resources assigned to the Agency in 2016, much fewer than those on the basis of which the Agency's Work Programme was developed, a number of activities/deliverables initially envisaged for 2016 were subsequently deprioritised (cancelled, postponed or in part combined with other activities/deliverables listed above):

- Establishment of appropriate mechanisms to access emission allowances data;
- Publication of parts of the trade information the Agency possesses, provided that commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred;
- Making available the Agency's commercially non-sensitive trade database for scientific purposes, subject to confidentiality requirements.

<sup>304</sup> The Agency is also continuously reassessing the scale of its monitoring of wholesale energy markets on the basis of the available resources.

## Annex I

### The Agency for the Cooperation of Energy Regulators

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](http://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

### Usage of the REMIT Portal

The REMIT portal is the central point of entry to the Agency's REMIT Information System. The REMIT Portal allows reporting parties to start registering themselves as RRM's. The REMIT Portal is also the access point to the Agency's supporting documentation, namely the Transaction Reporting User Manual, the Manual of Procedures on transaction and fundamental data reporting, the Requirements for Registered Reporting Mechanisms and the List of Organised Market Places.

The REMIT Portal serves as starting point for inquiries into the obligations and operation of REMIT. In total in 2015 there were 227,862 page views of the REMIT Portal. Of the available documents on the portal in 2015, the most frequently consulted are given in Table 9.

■ Table 9: 10 most consulted documents on the REMIT Portal in 2015

Name of the Document	Total number of clicks 2015
Q&A on REMIT	3 071
TRUM	2 313
List of OMPs	2 048
List of Standard Contracts	1 778
REMIT Implementing Acts	1 739
List of preregistered RRM's	1 505
FAQs on Transaction Reporting	1 215
Manual of Procedures	1 140
REMIT Regulation	1 064
REMIT Quarterly Issue 3	972

## Annex III

### List of Abbreviations

ACER/Agency	Agency for the Cooperation of Energy Regulators
AMIT WG	ACER Market Integrity and Transparency Working Group
ARIS	Agency's REMIT Information System
CEREMP	Centralised European Registry of Wholesale Energy Market Participants
CMT	Case Management Tool
DSO	Distribution System Operator
EMIR	European Market Infrastructure Regulation (Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories)
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	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
MiFID II	Directive 2014/65/EC on Markets in Financial Instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast)
MMG TF	Market Monitoring Governance Task Force
MoU	Memorandum of Understanding
MTF	Multilateral Trading Facility
NRA	National Regulatory Authority
OMP	Organised Market Place
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 IV

## Additional Information

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**Publishing date:** 07/10/2016

**Document title:** REMIT Annual Report 2016

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