

Ljubljana, 18 December 2020

To whom it may concern

Subject: Updated Open Letter on the Withdrawal of the United Kingdom from the European Union and implications on the registration of market participants and data collection under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT).

The European Union the Agency for the Cooperation of Energy Regulators (ACER) is updating the Open Letter published on 8 January 2019 regarding data reporting under Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT)¹ following the end of the UK's transition period on 31 December 2020.

Purpose of this open letter

The purpose of this Open Letter is to give guidance to national regulatory authorities and to inform market participants and the wider market about the views of the Agency with regard to certain repercussions on the implementation of REMIT after the end of the UK's transition from the EU on 31 December 2020.

Re-registration of Market Participants currently registered in the UK

Article 9(1) of REMIT obliges market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of REMIT to register with the national regulatory authority in the Member State in which they are established or resident or, if they are not established or resident in the European Union, in a Member State in which they are active.

In the light of the above, market participants established or resident in the UK – or market participants from third countries currently registered in the UK - who wish to enter into transactions or place orders to trade in European Union's wholesale energy markets after the end of the UK's transition from the EU on 31 December 2020 will need to be registered with a national regulatory authority of another Member State (EU27 Member State) where they are predominantly active (so-called "re-registration"). The same applies to market participants established or resident in the UK who are obliged to report lifecycle events to transactions entered into until 31 December 2020.

In accordance with Article 9(1), second subparagraph, of REMIT, a market participant may register only with one national regulatory authority. Nonetheless, market participants currently registered in the UK and intending to enter into transactions in European Union's

¹ OJ L 326/1, 8.12.2011.

wholesale energy markets after the end of the UK's transition from the EU on 31 December 2020 may already prepare their registration with the national regulatory authority of a EU27 Member State. Until the end of the UK's transition from the EU, they will continue to be registered solely in the UK.

Based on the records of national registrations and in line with requirements in Article 9(3) of REMIT, the Agency has established the European register of market participants (CEREMP²). Beyond its core function, CEREMP was also developed with a view to facilitate the national registration processes. CEREMP is currently used by all European Union's national regulatory authorities to register market participants, except for Agencija za energijo in Slovenia, ARERA in Italy and ANRE in Romania which have established separate tools for this purpose.

When re-registering with the national regulatory authority of a EU27 Member State which uses CEREMP for national registration purposes, market participants should use the "Change Member State" functionality in the CEREMP registration system. This functionality will pre-populate the registration form for the re-registration with the new national regulatory authority of choice with the information previously provided for registration in the UK. Market participants will be required to provide their previous UK ACER code in the custom fields for the "Change Member State" functionality. The initiation of the "Change Member State" functionality for re-registration is considered to fulfil the market participant's obligation to submit the registration form to a national regulatory authority prior to entering into a wholesale energy market transaction which needs to be reported under REMIT, pursuant to Article 9(4) of REMIT.

The Agency reminds market participants that the time national regulatory authorities need to analyse a registration request depends primarily on the quality of the registration file and encourages market participants to be complete and accurate in their filing for re-registration. Therefore the Agency invites market participants to make themselves familiar with the specificities of the registration process with the national regulatory authority they aim at re-registering with in due time in early-2021.

The approval process of the UK market participants' re-registration with the EU27 national regulatory authorities will commence on 4 January 2021, i.e. the first working day of 2021.

Data collection

Market participants will be able to continue reporting new orders placed and transaction concluded in 2020 with their UK ACER code until 4 January 2021, i.e. the first working day after the end of the UK's transition from the EU on 31 December 2020. Once re-registered with an EU27 national regulatory authority, they will receive a new ACER code for the reporting of records of transactions entered into and orders to trade placed as of 1 January 2021.

Any delay in reporting beyond the timeline stipulated in Article 7 of Commission Implementing Regulation (EU) No 1348/2014, resulting from the absence of the EU ACER

² Centralised European Register of Energy Market Participants

code or any other market participant identifier in the European Register of Market Participants³, should be communicated to the Agency by RRM via a contingency report.

The Agency is engaging on a continuous basis with Registered Reporting Mechanisms to ensure a smooth ongoing REMIT reporting and will address any REMIT reporting issue related to the UK withdrawal from the European Union through the existing communication channels.

The Agency would like to remind stakeholders on its guidance on the application of REMIT to non-EU market participants trading in European Union's wholesale energy markets⁴ and their reporting obligation under REMIT⁵ and emphasises that this guidance will also apply to UK market participants trading in European Union's wholesale energy markets following the UK withdrawal from the European Union.

Regarding ESMA's public statement of 1 October 2020 on the impact of Brexit on the application of MiFID II/MiFIR, which also describes the application of the MiFID II "C(6) carve-out" with reference to the notion of a "wholesale energy product" according to Article 2(4) of REMIT, ACER would like to complement ESMA's assessment as follows: Where UK electricity or natural gas would continue to be traded on a spot trading platform in the EU after the end of the transition period, derivatives relating to the above-mentioned UK electricity or natural gas would continue to qualify as "wholesale energy products" under Article 2(4) of REMIT. ACER would only like to clarify that, given the "delivery in the Union" condition of Article 3(1)(a) of Commission Implementing Regulation (EU) No 1348/2014, such wholesale energy products would no longer be reportable to the Agency as of 1 January 2021.⁶

In general, the Agency emphasises that market participants in European Union's wholesale energy markets must comply with the requirements in REMIT including reporting records of European Union's wholesale energy market transactions, and orders to trade, to the Agency. All market participants and third parties acting on their behalf must ensure that this reporting requirement continues to be fulfilled. The national regulatory authority registering market participants from the UK will be responsible to ensure that the enforcement provisions pursuant to Article 13 to 18 of REMIT be effectively applied.

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³ <https://www.acer-remit.eu/portal/european-register>

⁴ 4th edition of ACER Guidance on the application of REMIT from 22 March 2018, available under: https://documents.acer-remit.eu/wp-content/uploads/4th-Edition-ACER-Guidance_updated.pdf

⁵ Transaction Reporting User Manual (TRUM) from 26 April 2017, available under: <https://documents.acer-remit.eu/category/remit-reporting-user-package/transaction-reporting-user-manual-trum/>.

⁶ Please note, however, that according to Article 9 of the Protocol on Ireland/Northern Ireland to the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community, certain provisions of Union law governing wholesale electricity markets listed in Annex 4 to this Protocol, including REMIT, shall apply, under the conditions set out in that Annex, to and in the United Kingdom in respect of Northern Ireland.