ACER
European Union Agency for the Cooperation of Energy Regulators

REMIT Quarterly

ACER guidance on the application of REMIT and transaction reporting

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French High Court upholds the NRA sanction decision in a REMIT market manipulation case

On 2 February 2022, the French Conseil d'Etat upheld the CRE sanction committee's 2019 decision against the company BP Gas Marketing Limited for market manipulation on the French gas market.

In December 2019, the Dispute Settlement and Sanctions Committee (CoRDiS) of the French National Regulatory Authority (NRA), *Commission de Régulation de l'Energie* (CRE), imposed a fine of EUR 1 million on BP Gas Marketing Limited (BPGM). According to CoRDiS, BPGM had engaged in market manipulation on the French Southern virtual Gas Trading Point (PEG Sud) between October 2013 and March 2014, thereby breaching Article 5 of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). It was the second penalty imposed by CoRDiS under the REMIT regulation.

BPGM had appealed against CoRDiS' decision to the French *Conseil d'Etat* (hereinafter 'High Court'), which recently dismissed this appeal and upheld the sanction decision, both on procedural and material grounds.

According to the High Court, the sanctioning procedure followed by CoRDiS respected the principles of independence and impartiality.

On the merits of the case, the High Court noted that the mere likelihood of a transaction or order to give false or misleading signals to the market is enough to qualify a behaviour as market manipulation. It is not necessary to demonstrate that such signals were actually given, or that there was manipulative intent.

The High Court also reiterated that an instance of market manipulation can be qualified on the basis of a body of consistent evidence resulting from the combination or reiteration of behaviours likely to give false or misleading signals to the market.

This understanding of the High Court is fully aligned with the ACER Guidance, which notably emphasises that 'there is no need for the NRAs to demonstrate that false or misleading signals on the demand, supply or prices of wholesale energy products were actually sent. It is enough that, in the circumstances of a given case, the behaviour was likely to give these false or misleading signals' and that 'whether the behaviour is intentional or not is irrelevant to qualify it as a breach of Article 5 of REMIT in the form of "market manipulation"'.

In view of the above, the High Court decided that a breach can legitimately be established based on CoRDiS' analysis of the combination and reiteration of the suspicious behaviours unfolding over the course of 37 trading days on which it founded its decision (e.g. the piling of sell orders when the interest was on the buy side of the order book, the cancelation

of sell orders shortly before or soon after purchasing large volumes, back-and-forth transactions within a short period without an economic rationale, etc.). BPGM had placed orders on the sell side of the order book with no intention of executing them, which was likely to give a misleading impression of an abundant supply and facilitate transactions on the buy side of the order book.

According to the High Court, by basing its decision on the above-mentioned elements and by noting that BPGM did not demonstrate that its behaviour was consistent and economically rational, CoRDiS did not make any errors of law and conformed to the rules regarding the burden of proof and the presumption of innocence. CoRDiS was not bound to demonstrate that the behaviour could only be explained by market manipulation and not by any other plausible rationale.

ACER welcomes the High Court's second ruling confirming the lawfulness of CoRDiS' sanction decision adopted under REMIT.

The decision of the French High Court is available here (in French).

The initial sanction decision from CoRDiS is available here (in French).

More on the initial sanction decision from CoRDiS can be found in the REMIT Quarterly publication from Q1/2020.

The ACER Guidance Note 1/2019 on layering and spoofing is available here.

Hydrogen wholesale market development

Political ambitions

Already before the Russian invasion of Ukraine, IRENA[1] projected that hydrogen trade and investment flows would spawn new patterns of interdependence, and that geopolitical relations would shift[2]. As a consequence of the war in Europe, the ambitious timeline of the EU hydrogen strategy[3] is likely to be further tightened. In March 2022, the European Commission endorsed in the REPowerEU[4] strategy a quicker transition to renewables and hydrogen as a key to reducing energy dependence on Russia.

In a white paper on the importance of an effective hydrogen regulation, published in 2021 by ACER and CEER[5], it was suggested to carry out a periodic market monitoring to keep track of market developments in order to deal with changing market circumstances and evaluate if there is any need for regulatory interventions. This article takes a look at the structural developments in the hydrogen market.

Current state of play

Current EU demand

Comparing the estimates for hydrogen demand in EU countries found in academic literature[6] with the overall primary energy consumption[7] shows that the Netherlands currently has the highest relative use of hydrogen with approximately 48 TWh in 2020, which represents around 5 % of the overall primary energy consumption. It is to be noted that the comparison of hydrogen demand with the overall primary energy consumption is at the current stage slightly misleading, as the current use of hydrogen is not part of the primary energy consumption[8], but it nonetheless provides a relative perspective.

For Germany, hydrogen production had a slightly decreasing tendency from 2010 to 2020[9], due to declining demand from the chemical industry. It was at approximately 70 TWh in 2020, which is less than 2% of the overall primary energy consumption in Germany.

Demand structure

According to IEA[10], the use of hydrogen today is almost entirely dominated by the chemical industry (fertiliser production) and oil refining, without a significant use in any other segments. The current demand structure requires big volumes of hydrogen at rather local industrial production sites; it does not yet require an advanced distribution grid. For decentralised applications of hydrogen, such as transport and household consumption, there is the classic "the chicken or the egg dilemma": in order to generate decentralised demand, risky network investments are required. An example of this kind of investment is the German network of 91 fully functional

1 International Renewable Energy Agency.
2 "Geopolitics of the energy transformation: The hydrogen factor" by IRENA (Jan 2022).
3 "A hydrogen strategy for a climate-neutral Europe" by EU Commission (July 2020).
4 See: https://ec.europa.eu/commission/presscorner/detail/en/ip_22_1511.
5 "When and How to Regulate Hydrogen Networks?" by ACER and CEER (Feb 2021).
6 "Potential development of renewable hydrogen imports to European markets until 2030" by Oxford Institute for energy studies (March 2022).
7 Primary energy consumption by country 2020 | Statista.
8 See definition here: https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Glossary:Primary_energy_consumption.
9 See: "Production volume of hydrogen in Germany" published by Statista.
10 See: https://www.iea.org/reports/hydrogen.

Hydrogen Refuelling Stations where hydrogen prices have been fixed at EUR 9.50 per litre for years[11]. Such an investment could trigger further demand from trucks and/or private cars.

The hydrogen demand forecast from IEA[12] suggests that hydrogen demand in segments other than fertiliser and oil refineries varies significantly depending on different scenarios. The share of other uses is expected to pick up in the late 2020s and to reach between 5 and 25% of global hydrogen demand by 2030 and between 35 to 60% by 2040. Out of the applications of hydrogen that are expected to significantly pick-up in the 2030s, some are industrial with high demand and single locations (e.g. heat for iron and steel production), while other applications would require a distribution network (pipelines or transporting of compressed hydrogen by truck, railcar, etc.), such as using hydrogen for transport and cooking.

The development of the demand structure will be crucial in determining when and where a decentralised hydrogen grid is needed. The consultancy Guidehouse's[13] estimate for 2030 is that a regional hydrogen network would be covering Northern France, Belgium, the Netherlands and North-West Germany, while in 2040 there would be a network that would cover most EU countries. As pointed out in previous ACER publications[14], a transitional solution for the distribution of hydrogen could be the blending of (up to 20%) of hydrogen into the existing gas grid, which would come with significant repurposing costs.

Wholesale structure

Even for the relatively developed market in the Netherlands, there is no many-to-many wholesale market for hydrogen yet. The previously mentioned system of distribution points for hydrogen in Germany (hydrogen refuelling stations for transport) is an example of a fixed hydrogen price over a wider region. The two market leaders for hydrogen production (Air Liquide and Linde Engineering) give quotes for potential hydrogen buyers depending on quantity, duration, delivery location and the hydrogen production method ("blue" vs. "green" quality)[15].

Price competition and price assessments for hydrogen

The current demand structure is not favourable for a competitive many-to-many wholesale market spanning over a wider geographical area. The need for large, industrial quantities of hydrogen requires a long-term commitment. This can manifest in the form of producing hydrogen close to the place of demand or of transporting compressed hydrogen to the place of demand. Competition is often limited to a relatively small number of suppliers with the necessary economies of scale to offer hydrogen over a wider area.

The more the demand structure will require distribution and decentralisation, the more opportunities will arise for a competitive market. A better infrastructure will mean more possibilities for buyers to source hydrogen. Such a grid could make hydrogen production projects , such as electrolysis close to offshore wind parks, more feasible than today, as it will be significantly easier to bring hydrogen to the market.

Some of the earliest noticeable developments that indicate moving in the direction of price transparency:

1. In the Netherlands, the Oxford energy paper has identified five cluster regions where the bulk of hydrogen is produced. A company requiring a lot of hydrogen and flexible in its decision where to produce could compare the prices between the clusters and decide on the location in case of significant cost differentials.

2. Platts[16] has been publishing hydrogen price assessments on every trading day based on theoretical production costs, depending on the production methodology, since 2021.

3. Deutsche Boerse's EEX is also expected to publish price assessments for hydrogen in 2022 based on theoretical production costs, actual supply transactions from bilateral trades, and import arrangements. This approach is welcomed by the market, as it could bring further transparency and potentially standardisation. However, the inclusion of transactions for hydrogen seems to be challenging in the current circumstances, as bilateral trades for delivery at specific industrial locations are rarely published and long-term hydrogen import projects are so far mostly in the initiation phase and would only become effective at the end of this decade if realised. A clear price signal can hardly be derived from these long-term deals with relevance for the next five years.

Conclusion

As the liquid wholesale hydrogen market continues to form, ACER will keep an eye on the developments. Eventually, such a hydrogen wholesale market would be interlinked with electricity and gas markets via the fundamental connection of electrolysis, steam methane reforming, and possibly electricity generation with hydrogen. The future development of a liquid and connected hydrogen market covering a wider region will also strongly rely on the development of a demand structure and the associated required network investments. Another challenge will be to find a way to standardise hydrogen products in order to concentrate liquidity and, on the other hand, to create effective premium markets to incentivise environmentally friendly hydrogen production.

Lessons from the newly established carbon market in the mid-2000s show that high integrity and transparency are

11 See: https://h2.live/en/.
12 International Energy Agency.
13 "European hydrogen backbone" by Guidehouse presented at Madrid forum (Oct 2020).
14 "Transporting pure hydrogen by repurposing existing gas infrastructure" by ACER (July 2021).
15 For example: https://www.linde-engineering.com/en/hydrogen/index.html.
16 Platts hydrogen assessments.

key in preventing market abuse and manipulation in their early stages. In this respect, ACER is taking steps towards supporting this young, developing wholesale market.

Enhancing the monitoring of the European single intraday coupling market: ACER Decision 01-2022

On 14 February 2022, ACER published a decision requesting further information from Nominated Electricity Market Operators (NEMOs) operating in the Single Intraday Coupling (SIDC) market (ACER Decision 01-2022).

The decision is the result of an intense three-year cooperation with the NRAs and the relevant organised market places active in the SIDC, the NEMOs.

The SIDC first went live in June 2018, opening up the possibility for a single EU cross-zonal intraday electricity market. The main feature of the SIDC is to increase the trading possibilities of market participants by expanding the scope of the trading activity. In particular, the SIDC enables market participants to continuously trade intraday products in a more liquid market thanks to the cross-border trading, which is allowed in case of available connection capacity between different bidding zones.

Based on the analysis carried out by ACER and the NRAs on the trading data generated by the SIDC system after its go-live, it became immediately clear that the current structure of the REMIT data reporting regime was not sufficient for the collection of the information necessary for the reconstruction of the trading activity on the SIDC market. This issue, brought on by the fact that the new market design had not been not foreseen in the REMIT data reporting regime, had the potential to impact ACER's ability to fully comply with its mandate to monitor the wholesale energy markets pursuant to Article 7 of REMIT.

As highlighted in previous REMIT Quarterly issues, the relevance of the SIDC market has grown since its first go-live: both due to the increased interest of market participants to exploit the possibility of trading electricity closer to delivery, and due to the planned geographical expansion of the project. After nearly four years since the first go-live, the SIDC now comprises 24 countries in Europe, representing around 50% of all electricity trades executed on organised market places and collected under REMIT, with an increasing trend (see REMIT Quarterly issue No. 27).

In 2019, given the expected increasing relevance of this market, ACER started closely interacting with NEMOs and created a dedicated project team with the NRAs to establish a joint, efficient solution to collect the data required for SIDC monitoring. The cooperation between ACER, NRAs and NEMOs proved to be both quite intense and constructive, due to the high complexity of the project. In early 2021, ACER, the NRAs and NEMOs reached a consensus on the information that needs to be additionally collected from NEMOs by ACER. The scope of this information was defined in a way that complemented the data on SIDC already collected from reporting parties according to Article 8 of REMIT.

The additional information was officially requested via a 2022 ACER Decision pursuant to Article 3(2) of Regulation EU 2019/942 (ACER Regulation) in order to allow ACER to comply with its mandate to monitor the EU wholesale energy market as described in Article 7 of REMIT.

According to the timeline defined in ACER Decision 01-2022, NEMOs are expected to start providing the requested information by the end of October 2022, however ACER has the possibility to postpone the timeline for technical reasons, if necessary.

The request indicated in the decision is intended to apply until the REMIT data reporting regime, as defined in the Commission Implementing Regulation (EU) No 1348/2014, is modified to include a requirement to provide to ACER the information currently requested with the decision. ACER will therefore assess the purpose and the necessity of the request at least every year and, where appropriate, revise the decision.

The implementation of the SIDC data collection represents the result of a fruitful cooperation between ACER, the NRAs and SIDC parties, however it also highlights the potential need for a revision of the REMIT data reporting regime. Such a revision should allow sufficient flexibility to accommodate the evolution of the market design and the trading activity in order to ensure the integrity and transparency of the EU wholesale energy market.

Enhancing stakeholders' awareness: a joint effort

A broad and recurring process of enhanced REMIT stakeholders' awareness and engagement has been initiated at ACER.

The process involves a 'rolling programme' of consultation with REMIT stakeholders to enhance their awareness and engagement when it comes to REMIT activities and their benefits for the markets, and to potentially facilitate ACER's interaction with stakeholders and NRAs.

This new set of activities has been carefully selected by taking into consideration the outcomes of a REMIT stakeholder mapping and prioritisation exercise carried out in 2021, as well as the needs and perspectives of different entities.

To give a few example of these activities, ACER is currently:

- revamping the REMIT Portal by fixing the existing issues and enhancing the usability also via the release of the new REMIT Knowledge Base;
- improving the performance of scheduled maintenance activities in the production or testing environment during working days;
- maintaining the IT architecture in order to avoid any security or unavailability issues;

Many others activities are ongoing or in development, but it is important to understand that stakeholders also have an important role to play by signalling their needs and areas of improvement to ACER.

ACER launched a short survey in late 2021 to gather more information on the latter. As highlighted in the REMIT Quarterly Issue No. 27, the seven-question survey aimed to assess the overall stakeholder satisfaction with REMIT data collection in 2021 (in terms of service, communication and aspects that could be improved by ACER) and the organisation of roundtable meetings. The survey was launched in early December 2021 and lasted until the end of January 2022. More than 100 companies were asked to provide their feedback, however less than 10% answered.

The low response rate has several counter effects. On the one hand, the limited feedback inhibits ACER from carrying out a meaningful assessment and obtaining conclusive results on the overall stakeholder satisfaction. Additionally, the validity of the proposals from the few respondents is also diminished. On the other hand, the scarcity of feedback shows a potential lack of interest from stakeholders to participate in ACER activities and improve cooperation with ACER or ACER's outreach to its stakeholders.

Should ACER consider the poor engagement as indicative of an overall high satisfaction? If so, the concerns raised by the few active stakeholders would be at risk of being perceived as marginal.

It is worth mentioning that when it comes to REMIT data reporting, low stakeholder engagement is also observed during the roundtable meetings and, above all, during consultations of new transaction reporting guidance. Similarly to the survey on stakeholder satisfaction, consultations of new transaction reporting guidance on average attract less than 10% of all the relevant entities.

Despite being aware that not all stakeholders might be competent or interested in providing feedback on the specific topics that are under consultation, ACER is alarmed by the absence of feedback from entities clearly impacted by new guidance. The bilateral interactions that ACER had in early 2022 with some entities, prompted by ACER's REMIT data quality analysis, revealed a worrying lack of awareness of recent updates (or even the existence) of transaction reporting guidance, such as the Transaction Reporting User Manual (TRUM) and its annexes, the FAQs on transaction reporting and the FAQs on inside information and fundamental data reporting. This is even more evident amongst stakeholders that are not energy exchanges, as the latter represented the priority of ACER's data quality analysis in the early stages of the REMIT data reporting implementation.

To overcome this problem and avoid jeopardising data quality and thus the reliability of REMIT data, it is ACER's conviction that stakeholders should reconsider their current approach. ACER is willing to possibly simplify its guidance on data reporting or find new ways of facilitating its use.

ACER is committed to improving its communication and cooperation with REMIT stakeholders on topics related to data reporting, however it is evident that this can be accomplished only if stakeholders become more actively involved in meetings and consultations and provide feedback and input to ACER.

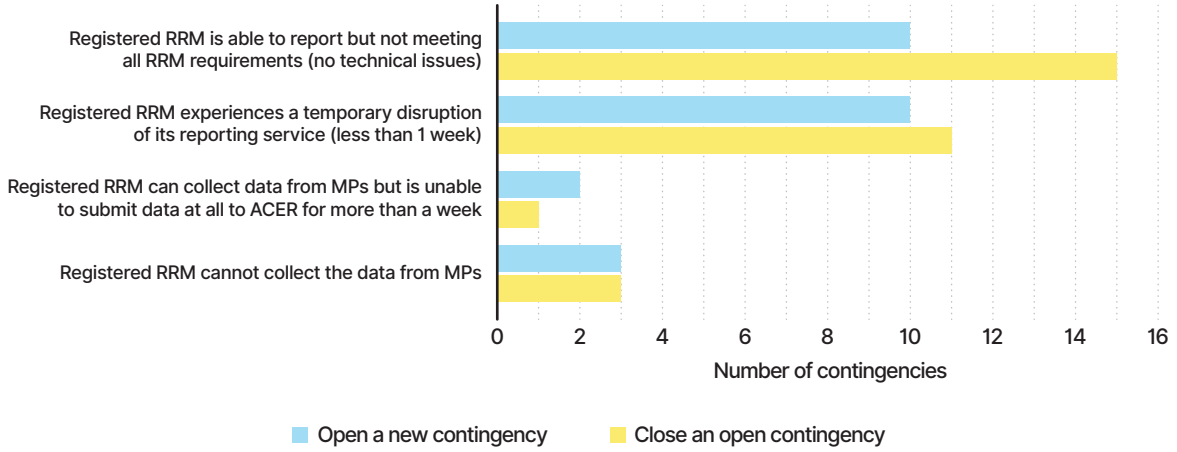
Overview of contingency reports opened by RRMs

Every quarter, ACER communicates the number and status of contingency reports opened by registered reporting mechanisms (RRMs), as well as the most common reasons for which RRMs resort to contingency in the first place.

The statistics for Q1 2022 show that 14 different RRMs opened 25 contingency reports between January 2022 and March 2022. The two most common contingency scenarios indicated by RRMs in this period refer to two reporting cases: in the first case, an RRM is able to report but is not meeting all of the RRM requirements (such as completeness of data, timeliness of submission, accuracy of data, and validity), while in the second case, an RRM experiences a temporary disruption of its reporting service for less than one week. In particular, most of the incidents affect the reporting of the standard supply contract data type, as defined by REMIT and the REMIT Implementing Regulation.

Out of the 25 contingency reports opened during the quarter, 22 have already been closed (RRMs needed five working days on average to close them). The other three reports remain open.

Figure 1: Number of contingencies opened and closed in Q1 divided by scenario



Source: ACER (2022).

Recent updates of REMIT documentation

Updated Questions & Answers on REMIT Fees and the Annex to Questions & Answers on REMIT Fees

On 28 January 2022, ACER published an updated version of **the Questions & Answers on REMIT Fees and the Annex to Questions & Answers on REMIT Fees**.

The updated version of the Questions & Answers on REMIT Fees provides updates, corrections and aligns the text with the TRUM and issued debit notes.

The Annex to Questions & Answers on REMIT Fees is intended to inform on the exceptions from the application of REMIT fees due to ACER for collecting, handling, processing, and analysing of information reported by market participants or third entities reporting on their behalf pursuant to Article 8 of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT).

Access the updated version of the Questions & Answers on REMIT Fees and the Annex to Questions & Answers on REMIT Fees here.

Updated TRUM, TRUM Annex II and FAQs on Transaction Reporting

Following a five-month consultation with stakeholders aimed at improving REMIT data reporting, ACER published a new version of **the Transaction Reporting User Manual (TRUM)** and its **Annex II** on 31 March 2022.

The amendments provide guidance on the reporting of transactions related to the transportation of natural gas. Annex II incorporates new examples of transaction reporting to better support stakeholders in complying with REMIT obligations.

Access the updated TRUM and Annex II here.

On 31 March 2022, ACER also published the updated 13th edition of **the FAQs on REMIT transaction reporting**.

The updated edition of the FAQs includes four new frequently asked questions to better cover the evolution of the trading activity on EU markets, as well as the updates of two existing FAQs. Access the FAQs on REMIT transaction reporting here.

All documents are also accessible via the new REMIT Knowledge Base.

Updated Questions & Answers on REMIT policy

On 31 March, ACER published the 27th edition of **the Q&As on REMIT policy**. The new edition of the Q&As provides clarifications on three topics (disclosure of inside information, guarantees of origin, and renewable energy aggregators), developed in coordination with the relevant NRAs.

Access the 27th edition of the Q&As on REMIT policy here.

Updated List of accepted EIC codes

The first 2022 quarterly update of **the List of accepted EIC codes** was published on the REMIT Portal on 31 March.

The new edition of the List of Accepted EIC incorporates three new EICs as requested by stakeholders. Furthermore, it was announced that 39 codes referring to non-EU natural gas connection points would be delisted by the end of 2022.

Access the latest List of accepted EIC codes here.

The next update of the List of accepted EIC codes will occur by the end of Q2 2022. The involved parties are invited to check Annex VI of the TRUM before submitting their requests, and to make sure to submit their requests for the inclusion of new codes in the List of accepted EIC codes no later than two weeks before the end of a quarter. Late requests will be considered for the next planned quarterly publication.

The new REMIT Knowledge Base

After a period of temporary unavailability, the REMIT Knowledge Base is back online with a new look and feel as of 31 March 2022.

The REMIT Knowledge Base makes it possible to search for keywords across several REMIT documents simultaneously, namely the electronic versions of the Q&As on REMIT, the FAQs documents on data collection, and the Transaction Reporting User Manual (the main text and its Annexes). Stakeholders can subscribe to RSS feeds to keep up with the latest updates of important REMIT documents.

306 REMIT breach cases under review at the end of the first quarter 2022

ACER had 306 REMIT cases under review at the end of Q1 2022. REMIT cases are potential breaches of REMIT that are either notified to ACER by external entities or identified by ACER through its surveillance activities.

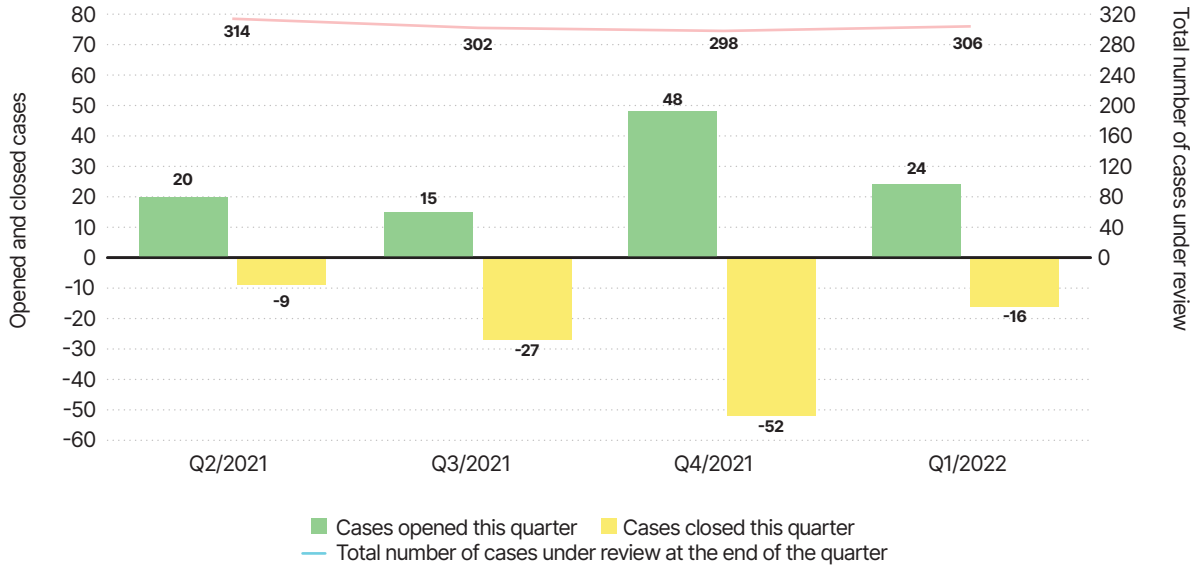
A case could, after a thorough investigation by the relevant national authority, lead to sanctions. A case could also be closed without sanctions, for instance if the suspicions were unfounded.

Figure 2 shows the number of cases that were under review by ACER at the end of Q1 2022.

Table 1 lists the cases where a Decision imposing a sanction was published by the relevant national authority in the last four quarters. Some of these Decisions are currently under appeal. An overview of all market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions made publicly available can be found here.

ACER is responsible for the monitoring of wholesale energy markets and aims to ensure that national regulatory authorities carry out their tasks in a coordinated and consistent way, but it is not, however, responsible for the investigation of potential breaches of REMIT.

Figure 2: Potential REMIT Breach Cases - Quarterly Statistics



Source: ACER (Case Management Tool).

Table 1 - Overview of market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions (last 4 quarters)

Decision date	NRA, Member State	Market Participant	Type of REMIT breach	Fine	Status	Source
30 September 2021	BNetzA (DE)	Energi Danmark A/S	Article 5	EUR 200,000	Final	Link
30 September 2021	BNetzA (DE)	Optimax Energy GmgH	Article 5	EUR 175,000	Under appeal	Link
24 August 2021	OFGEM (UK)	ESB Independent Generation Trading Limited and Carrington Power Limited	Article 5	£ 6,000,000 (approx. EUR 6.7 million**)*	Final	Link

Note: Article 18 of REMIT establishes that the rules on penalties for breaches of Article 3 and 5 of REMIT are established by the Member States. The implementation regime is therefore different across Member States and some breaches of REMIT may be sanctioned under national provisions. Please consult the sources for the status of the proceedings and more information on the Decisions. Only the Decisions publicly announced by the NRAs are included. Due to this fact, there are several sanction Decisions taken in 2020 that are not part of this table.

** This amount includes both the (i) fine and (ii) confiscated profit.*

***The fines expressed in other currency than EURO are converted in EURO using the ECB exchange rate on the day of the Decision.*