



REMIT Quarterly

ACER guidance on the application of REMIT and transaction reporting

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Cross-Border Investigatory Group: Ineffective Disclosure by TSOs about Available Cross- Border Transmission Capacity

– anonymised case study¹

Procedure

In 2015, two market participants reported suspicious trading behaviour allegedly affecting two wholesale energy products (a weekly and a monthly electricity forward) through the Agency's [Notification Platform](#) and via mail. According to the reports, the observed price levels and movements of these wholesale energy products were not consistent with the publicly available information regarding the available cross-border transmission capacity between two EU Member States.

In its initial assessment, the Agency identified a potential breach of the prohibition of insider trading under Article 3(1) of REMIT² and of the obligation to disclose inside information regarding the available cross-border transmission capacity under Article 4(1) of REMIT. Based on the assessment and in line with Article 16(4)(c) of REMIT, the Agency invited two national regulatory authorities (NRAs) from the affected Member States to an investigatory group (the 'Investigatory Group') in order to establish whether REMIT had been breached and in which Member State.

The Investigatory Group led by the Agency met on a quarterly basis to coordinate the investigatory steps. The two NRAs investigating the case requested that the relevant market participants provide information in a synchronised way. Furthermore, the Agency requested transactional data³ from a third NRA (as some of the relevant transactions were executed on broker platforms based in a third country outside of the jurisdiction of two NRAs involved) in order to

analyse all relevant trades related to the suspicious events. The gathered information was shared within the Investigatory Group and enabled a coordinated assessment of the case.

In 2016, after an in-depth analysis of the case information, the Investigatory Group members concluded to close the case by recommending certain improvements to the involved market participants regarding their inside information disclosure practices.

Potential Breach

At the end of 2014, information about the disconnection of a cross-border network asset —planned for early 2015—was published on the websites of the two responsible transmission system operators (TSOs). The TSOs identified the unavailable network asset using different code names. In addition, the TSOs did not specify the relevant border affected by the disconnection and published the information at different momentums (TSO-B published the information 11 days after the publication from TSO-A). On the day of the last publication (by TSO B), the allocation platform responsible for selling the affected cross-border capacity announced the reduction of the offered capacity for the relevant period and identified the border affected.

Three days later, TSO-A informed TSO-B via email that it would "surely" have to cancel the disconnection of the network asset due to the prolongation of the maintenance works of another double circuit caused by heavy icing. This information

was reiterated by TSO-A a few days later and confirmed by TSO-B.

Four days later, TSO-A published on its website an announcement about the cancelation of the disconnection of the network asset concerned. This announcement did not contain a mandatory time stamp. On the same day TSO-B published the monthly plan of outages for the relevant month, in which the originally planned disconnection of the network asset was simply removed from the list of planned outages.

Although the TSOs published some information regarding the cancellation of the disconnection, the content, location and timing of the disclosures concerned was not sufficient to ensure an effective publication of inside information. This created a situation where not all stakeholders (certainly not the two market participants that informed the Agency about the suspicious behaviour) were aware of this information. For instance, one of the major energy news provider wrote about rumours (not facts) vis-a-vis the cancellation of the disconnection, when information about the cancellations was already available. Therefore, not all market participants were trading based on the same information on market fundamentals.

The NRAs ruled out a breach of Article 3(1) of REMIT as evidence was not conclusive on the use of inside information to trade.

Contents

1. Case Study p.1-2
2. ACER Guidance on Wash Trades p.2
3. Termination of Inactive Market Participants' RRM Registration Process p.3
4. Update of the Documents p.3
5. Statistics p. 4

As for the potential breach of Article 4(1) of REMIT, the NRAs concluded that the involved TSOs can improve their disclosure practices by following the recommendations of [ACER Guidance](#)⁴ on effective and timely disclosure.

The NRAs have requested that the respective TSOs address certain shortcomings. They have in particular pointed out that an urgent market message must have a time stamp, the history of changes has to be traceable, assets should be immediately identifiable and the location of the message should be clear to all stakeholders.

Key Takeaways

The establishment of the cross-border Investigatory Group allowed a consistent approach through coordinated evidence collection, sharing of information and best practices among NRAs, and harmonised recommendations to the TSOs.

The work in the Investigatory Group also highlighted the differences between the purposes and the regimes for information disclosure under REMIT and the Transparency Regulations⁵. This helped to raise awareness about the REMIT obligations for TSOs as market participants under REMIT. In order to promote the transparency and integrity of the markets, it is important that TSOs are fully aware of the sensitivity of the information they are dealing with as it may impact the market. A lack of adequate transparency and integrity in the markets may undermine the trust on wholesale energy markets and thus negatively impact liquidity and the creation of a fully-integrated internal energy market in EU.

The disclosure of any inside information by market participants has to be fully traceable by any stakeholder regardless of their knowledge on the relevant market. For REMIT purposes, market participants are urged to include in their national [registers of market participants](#) the specific single location where they are publishing all REMIT-related inside information that they disclose. A failure to do so may constitute a breach of Article 9(5) of REMIT.

¹This case is presented anonymously to ensure the fulfilment by the Agency of the obligation included in Article 17 of REMIT (professional secrecy). This Article safeguards the confidential information received by the Agency in the course of investigations performed by NRAs.

²Regulation (EU) No 1227/2011.

³Please note that the data reporting obligation under Article 8 of REMIT only started after the occurrence of the facts—on 7 October 2015.

⁴4th edition, Section 7.2. and 7.3.

⁵Regulation (EU) No 543/2013, Regulation (EC) No 714/2009, Regulation (EC) No 715/2009.

ACER Guidance on the Application of Article 5 of REMIT to Wash Trades

The Agency published the first in a series of Guidance Notes (Guidance Note 1/2017) on the types of practices that may constitute market manipulation under REMIT. With the Guidance Note, the Agency complements the ACER Guidance by providing more in-depth information on the assessment of wash trades against Article 5 of REMIT and by establishing a common understanding of the concept of wash trades in order to ensure that NRAs apply REMIT in a consistent way.

Article 5 of REMIT prohibits any engagement in, or attempt to engage in, market manipulation on wholesale energy markets. The current 4th edition of the Agency's Guidance on the application of REMIT provides examples of the most common types of market manipulation under Article 5 of REMIT. Under certain circumstances wash trades are some of them.

Wash trades are defined by the Agency as the act of a market participant entering into arrangements for the sale or purchase of a wholesale energy product where there is no change in the beneficial interest or market risk or where the beneficial interest or market risk is transferred between parties who are acting in concert or collusion. Wash trades, however, can appear in different forms and levels of complexities. In its simplest form, a wash trade is a transaction in which the market participant is simultaneously on the sell and the buy side.

The Agency used the experience gained so far in the review of cases involving wash trades to produce, together with NRAs, a Guidance Note on the topic. The Guidance Note:

- explains the concept of wash trades and provides illustrative examples;
- assesses wash trades against the definition of market manipulation under

REMIT;

- recommends NRAs to propose measures for persons professionally arranging transactions ('PPATs') in order to facilitate the consistent fulfilment of their obligations under Article 15 of REMIT.

Wash Trades and REMIT

To categorise some trading arrangements as wash trades, three main elements of a transaction need to be assessed: the absence of change in the beneficial interest, the absence of change in the market risk of the involved parties, and the involvement of multiple colluding entities. Each one of these elements is by itself sufficient to categorise a trading arrangement as a wash trade.

Depending on the specificity of each case, wash trades will be considered manipulative if they (i) give or are likely to give false or misleading signals to the market as to the supply, demand or price of a wholesale energy product, or (ii) secure or attempt to secure the price of a wholesale product at an artificial level.

For a wash trade to be considered (attempted - in case of intent) market manipulation under Article 5 of REMIT, the existence of one of the following three elements is a sufficient condition: the intent to send false/misleading signals to the market and/or to secure the price; the likelihood to send false/misleading signals; the actual sending of false/misleading signals and/or price securing at artificial levels. Proving the existence of only one of these elements is enough to conclude the existence of market manipulation, even though more than one of these elements may be present in the same behaviour.

In order to facilitate the consistent fulfilment of the obligation of PPATs under Article 15 of REMIT via a common understanding and approach to wash trades, the Guidance Note advocates further recommendations for the NRAs. It presents measures providing increased transparency, which can limit the occurrence of potentially manipulative wash trades. PPATs are advised to implement rules and procedures so as to prevent the occurrence of wash trades that may be deemed market manipulation under REMIT. The combination of either a pre-notification system or a transaction flagging system with a price tunnel and index correction measures are likely to reduce the probability of market manipulation using wash trades.

The Guidance Note is available on the [REMIT Portal](#).

Update of the Q&As and FAQs on REMIT

The Agency provided additional guidance on REMIT in Q2 2017 by updating its Q&As on REMIT, its FAQs on transaction reporting and its FAQs on fundamental data and inside information collection.

The Agency published on 26 June 2017 the 21st edition of REMIT Questions and Answers, which contains the most up-to-date information concerning REMIT policy issues.

The three new Q&As on REMIT provide additional information on what obligations final customers have to publish inside information, the specific example of inside information disclosure in the case of a gas-fired power plant outage, and general policy on market participants' obligations under Article 4 of REMIT.

The Agency published the seventh edition of the Frequently Asked Questions on REMIT transaction reporting on 26 April 2017. The seventh edition of the FAQs on REMIT transaction reporting provides new FAQs on Derivatives under Q 2.3.7, Q 2.3.8 and Q 2.3.9; general questions related to non-standard contracts under Q 3.1.21, Q 3.1.22, Q 3.1.23, Q 3.1.24, Q 3.1.25, Q 3.1.26, Q 3.1.27, Q 3.1.28 and Q 3.1.29; gas transportation contracts under Q 4.2.20, Q 4.2.21 and Q 4.2.22.

Furthermore, the fourth edition of the Frequently Asked Questions on REMIT fundamental data and inside information was published on the REMIT Portal on 18 May 2017. Due to the changes introduced with the MoP on data reporting version 4, certain existing FAQs on gas inside information were updated, while new FAQs on LNG, gas storage reporting and inside information were added.

The Agency announced via FAQ 4.1.15 that it will not be collecting web feeds from market participants' websites until further notice. The Agency will continue collecting web feeds from Inside Information Platforms.

New Edition of Transaction Reporting User Manual

On 26 April, the Agency has published the third edition of the Transaction Reporting User Manual (TRUM), which includes a new annex (Annex VI) on how to correctly report the Delivery point or zone, as well as the List of Accepted Energy Identification Codes (EICs).

The guidance provides additional information on how to correctly report the Delivery point or zone.

Any contract related to the supply of electricity or gas, irrespective of whether the contract is a spot, a physical forward, a future or an option contract, has a reference to a delivery point or zone. Additionally, financial derivatives related to EU electricity or gas have a reference price or other attributes that relate to the delivery of the commodity.

The Agency has published the list of accepted EIC codes for REMIT transaction reporting purposes on the [REMIT Portal](#) as an attachment to this Annex. No other codes should be reported unless listed on the REMIT Portal.

Additional codes that represent delivery points for REMIT transaction reporting purposes currently not listed should be notified to the Agency.

Manual of Procedures (MoP) on Data Reporting Updated

The fourth version of the Manual of Procedures (MoP) on data reporting was published on the REMIT Portal on 18 May 2017. The new version of the document contains updates of Annex VII and VIII on gas inside information reporting.

At the stakeholders' request, the kWh/h unit was inserted in the REMITUMMGas-Schema_V1 for inside information. Market participants can start using the unit in Q4 of 2017 when ARIS R5.0 is deployed.

Termination of Inactive Market Participants' RRM Registration Process

According to Article 12(1) of REMIT, the Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. More specifically, the Agency works to ensure the operational reliability of its REMIT information system ARIS, by maintaining its smooth operation and evolution through regular upgrades. The appropriate measures are taken in accordance with the stakeholders' needs, the number of users and other relevant factors, as well as the Agency's budgetary resources.

The Agency has detected, through a control commenced in 2015, that a significant number of market participants who started the registration process to become Registered Reporting Mechanisms (RRMs), and therefore also ARIS users, may pose a potential risk for operations under REMIT. At the moment, approximately 1200 RRM applicants are in the registration process, many of whom are market participants that initiated their registration, but did not continue with the process for a time period exceeding 6 months.

To efficiently respond to that risk, the Agency has decided to **terminate the RRM registration process of those market participants that have not started the 2nd identification stage** within 6 months after being approved in the 1st identification stage. Inactive market participants that are a **TSO, LSO and/or an SSO will not be subject to termination of the RRM registration process.**

The termination will be done through the ARIS DCI system. All respective administrators or persons indicated as Contact for communication by RRM applicants will receive an e-mail informing them about the termination and providing all other information that may be relevant.

There are currently 115 Registered Reporting Mechanisms (RRMs) approved by the Agency as listed on the Agency's REMIT Portal.

The Agency continues to encourage market participants to turn to one of the already registered RRMs in order to report data according to their obligation under REMIT.

An RRM registration process that has been terminated by the Agency can be re-initiated at a later stage if requested by a market participant who would like to become an RRM.



The Agency is organising "The 1st Energy Market Integrity and Transparency Forum", a public event that will be held on 11 October 2017. The forum will focus on REMIT policy topics (Q&A, UMM, REMIT data quality etc.) and the two years of REMIT experiences, as seen through the eyes of different stakeholders. It will also focus on the way forward: REMIT II on the horizon. You are welcome to join!

Statistics

114 REMIT Cases Under Review

At the end of Q2 2017, the Agency had 114 REMIT cases under review. REMIT cases are potential breaches of REMIT that are either notified to the Agency by external entities or discovered by the Agency 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.

The table to the right shows the number of cases that were under review by the Agency in the past four quarters.

The Agency 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.

EU Member States have the obligation to ensure that their NRAs have the required investigatory and enforcement powers to fulfil their responsibilities.

REMIT Queries

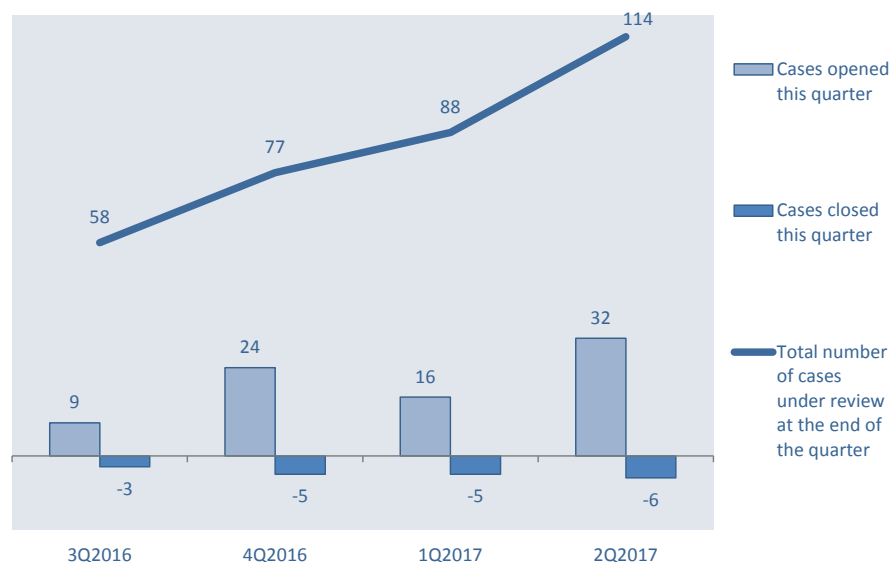
The chart on the right illustrates the total number of queries received by the Agency in the last four quarters through the various communication channels that have been put in place for the stakeholders (i.e. Agency's Central Service Desk (CSD) and functional mailboxes).

The Agency, when necessary, responds to specific questions on a one-to-one basis. Its main tool for responding to queries, however, remains the publicly available documentation, such as:

- Questions & Answers on REMIT;
- Frequently Asked Questions (FAQs) on transaction data reporting; and
- FAQs on REMIT fundamental data and inside information collection.

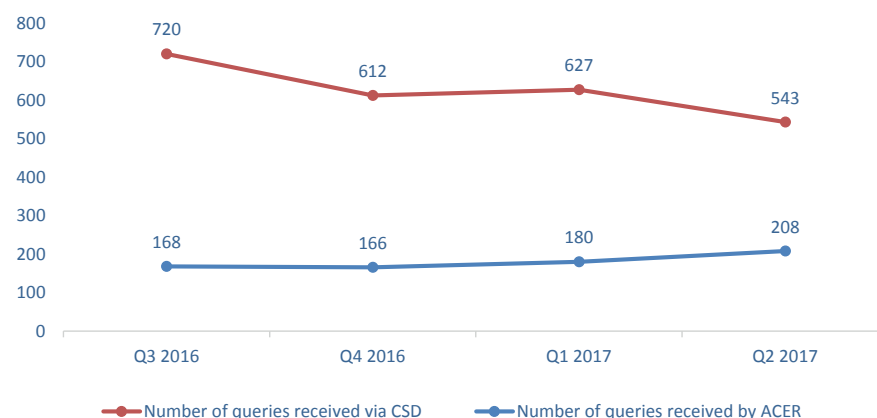
As the number of incoming questions gradually declines, the Agency's efforts will be directed towards enhancing the consistency and usefulness of the Q&A and FAQ documents. The Agency plans to intro-

Potential REMIT Breach Cases - Quarterly Statistics



Source: ACER.

Statistics on REMIT Questions Reaching the Agency



Source: Questions sent to the CSD and Agency's functional mailboxes.

duce new tools (the Knowledge Base) that will make the over-190-questions-strong document easier to search and more user-friendly. The Knowledge Base will also include all FAQs as well as the Transaction Reporting User Manual (TRUM).

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