

REMIT Quarterly

ACER guidance on the application of REMIT and transaction reporting

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Dutch national regulatory authority fines PZEM Energy for not publishing inside information

On 14 June 2022, the Netherlands Authority for Consumers and Markets (ACM) imposed a fine of EUR 150,000 on the Dutch energy company PZEM Energy B.V. (PZEM) for breaching Article 4 of Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). ACM found that PZEM had not always disclosed inside information about interruptions, ramping-ups, and restrictions in the production of a power plant under its management in an effective and timely manner.

The behaviour

PZEM, in participation with Électricité de France S.A. (EDF), owns and operates the power plant Sloe Centrale B.V. (Sloe-centrale). Sloe-centrale has two production units: Sloe 10 and Sloe 20, each with a nominal maximum capacity of 435 MW.

ACM reviewed several concrete instances of the handling of inside information related to the availability of the power plant and concluded that in two instances PZEM failed to properly disclose inside information, thereby breaching Article 4 of REMIT.

‘First instance’

On 24 January 2017, the TSO TenneT requested a production restriction for maintenance on the TenneT network. An agreement on the limit was concluded on 14 April 2017. Due to the network restriction (which caused a market restriction for the market participants), one of the production units (Sloe 10) was not permitted to generate power from 8 to 20 May 2017 and from 22 to 24 May 2017. The other production unit

(Sloe 20) had to generate power (i.e. must run) during this period with a capacity between a minimum of 220 MW (‘must run’) and a maximum of 400 MW. On 5 May 2017, PZEM disclosed the information that Sloe 10 would be unavailable during the network restriction. This notification, however, was limited to the capacity unavailability of Sloe 10 during the period of the network restriction and did not include information on the must run of Sloe 20.

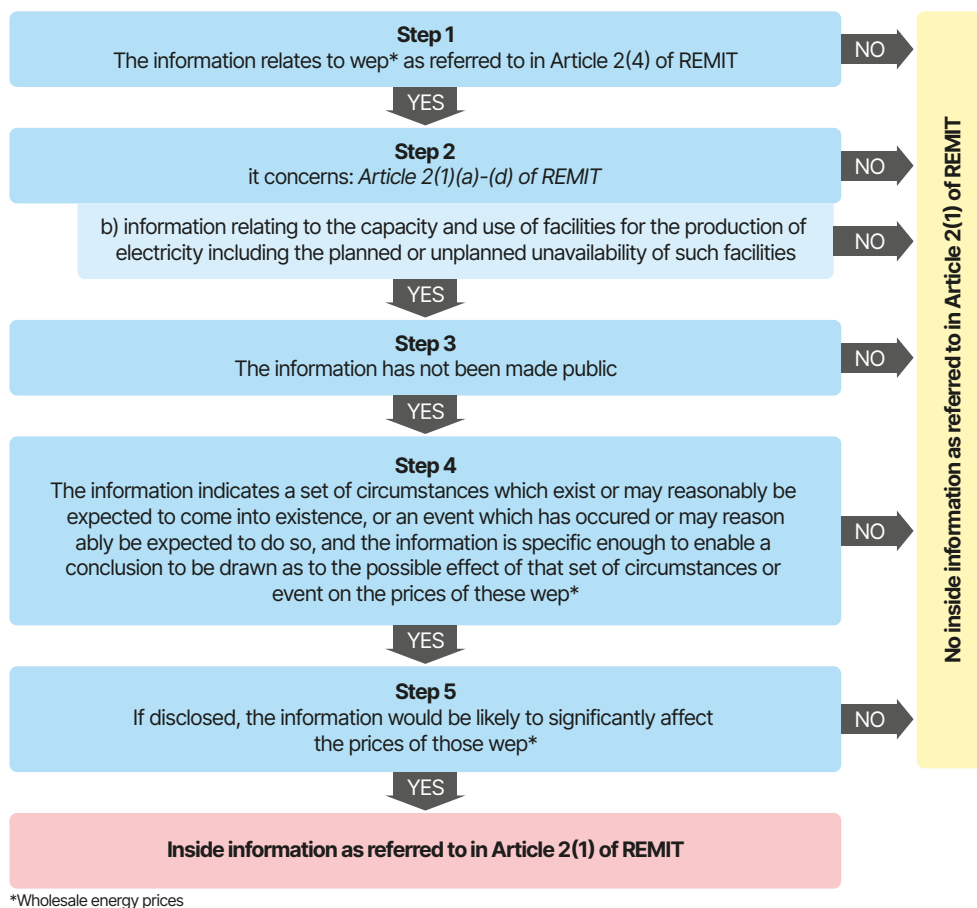
‘Second instance’

On 10 January 2019 at 8:30, PZEM published the information that the restriction of the available capacity of Sloe 20 would end at 14:00 that day. However, at 12:25 Sloe-centrale informed PZEM that Sloe 20 would only reach the level of minimum stable generation (MSG) of around 220 MW at 16:15, and would be fully available again as of 17:00. Nonetheless, at 12:42 PZEM disclosed that the restriction of the available capacity of Sloe 20 would end at 13:30 without adding that Sloe 20 would only be fully available as of 17:00 and would be significantly restricted prior to that.

The REMIT breach

The following section will focus on the ‘first instance’ and explain how ACM applied the four conditions of the ‘inside information’ concept and the concept of timely and effective disclosure according to REMIT and the ACER Guidance, in order to prove the breach of Article 4(1) of REMIT. Additionally, in its decision ACM used the steps described in the flowchart below to establish inside information.

Figure 1: Flowchart on inside information



Source: ACM Public Decision¹.

Inside information

Pursuant to Article 2(1) of REMIT, information qualifies as ‘inside information’ if it fulfils the following four cumulative conditions:

- i. **Precise:** ACM considers that the information on the network restriction must be considered precise within the meaning of Article 2(1) of REMIT in any case from 15:23 on 14 April 2017. At that time, a commercial agreement was in place concerning the network restriction: TenneT stated on 14 April 2017, at 15:23, that it agreed to the deal sheet and the price for the network restriction.
- ii. **Not public:** The information on the unavailability of Sloe 10 was not made available until the late disclosure (several months after receiving the information), while the information on the limited availability of Sloe 20 was never made public.
- iii. **Related to one or more wholesale energy products:** Both the information on the end time of the full unavailability of Sloe 10 and the information on the limited availability of Sloe 20 was related to a wholesale energy product, in particular to the daily and hourly electricity products for delivery in the period affected by the restrictions. Additionally, according to ACM, in general, any information on changes in the availability of electricity production

capacity for the Dutch market is related to trade in contracts for the supply of electricity in the European Union and/or derivatives in respect of electricity produced, traded or supplied in the European Union.

- iv. **Likely to significantly affect prices:** ACM assessed, based on a wholesale market survey, that in the Netherlands, information on changes in the availability of capacity of more than 50-100 MW is, as a general rule, information that a reasonable market participant would use for its trading decisions². As the change in the capacity available at Sloecentrale concerns several hundreds of megawatts, ACM concluded that this information relates to a sufficiently large magnitude of capacity that a reasonable market participant would use as part of the basis of its trading decisions.

Effective disclosure

On 5 May 2017, PZEM disclosed the information that Sloe 10 would be unavailable during the network restriction. This notification, however, did not correspond to the entire knowledge PZEM had at the time of the disclosure. The announcement was limited to the capacity unavailability of Sloe 10 during the period of the network restriction, but it did not include any information on the must run of Sloe 20. As a result, ACM

¹ Please note that the information in this flowchart is based on the [ACER Guidance](#).

² For more information, see the [Summary of ACM's REMIT Interviews about the value of information on production unit availability for trading decisions, October 2019, p. 18](#).

concluded that the disclosed information does not fulfil the condition of 'effective disclosure' under Article 4(1) of REMIT. According to the ACER Guidance, 'the publication of inside information should be as concise and as specific as reasonably possible as well as precise and complete enough to allow a correct understanding of the underlying event(s) that might potentially affect the prices of wholesale energy products.'

Timely disclosure

The requirement of 'timely disclosure' under Article 4(1) of REMIT implies that inside information needs to be disclosed as soon as possible and always before market participants trade in the wholesale energy products for which that inside information is relevant. PZEM did not make public the inside information about the network restriction as soon as it was precise enough to be considered inside information, but did so only on 5 May 2017. Moreover, the information on the

Sloe 20 production restrictions – the must run – was never disclosed by PZEM. As such, ACM concluded that this disclosure cannot be considered timely. In accordance with the ACER Guidance, 'timely' means as soon as possible, never later than within one hour of receiving the information and always before trading.

Conclusion

ACM concluded that PZEM breached Article 4 of REMIT. After ACM started the investigation, PZEM informed the National Regulatory Authority (that it had taken a number of compliance measures to prevent any future reoccurrence of this type of behaviour. Based on the Dutch Electricity Act³, the national regulatory authority (NRA) applied a fine of EUR 75,000 per each violation of Article 4(1) of REMIT, totalling EUR 150,000.

Overview of contingency reports opened by RRM

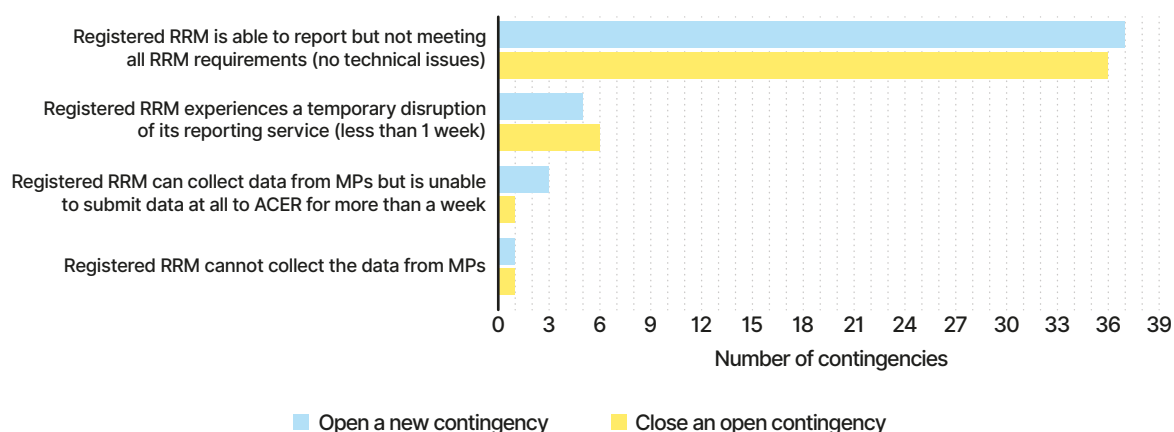
Every quarter, the European Union Agency for the Cooperation of Energy Regulators (ACER) communicates the number and status of contingency reports opened by registered reporting mechanisms (RRMs), as well as the most common reasons for which RRM resort to contingency in the first place. Contingency report is a notification by an RRM to ACER on issues related to data reporting (e.g. delayed reporting or temporary suspension in reporting, found data quality issue etc.).

The statistics for Q3 2022 show that 16 different RRM opened 46 contingency reports between July and September 2022. The most common contingency scenario indicated by RRM in this period refers to the cases when 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). 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 46 contingency reports opened during the quarter, 37 have already been closed (RRMs needed two days on average to close them). The other nine reports remain open.

Figure 2: Number of contingencies opened and closed in Q3 divided by scenario



Source: ACER (2022).

³ Under Section 77i(1), preamble and (b), of the Dutch Electricity Act, ACM may also impose on the violator an administrative fine of a maximum of EUR 900,000 for each violation of Article 4 of REMIT or, if greater, 10% of the violator's turnover.

Recent updates of REMIT documentation

The update of the ARIS Data Validation Rules Configuration Document

On 22 September 2022, validation rule 2BPCIMPCPR1_1 was enabled in the ARIS Production environment. Its purpose is to check whether trade reports identify the same market participant as their linked order reports. The rule is a modified version of the previous rule, 2BPCIMPCPR1, which was disabled in the ARIS DCI Production environment. The applied modification is the removal of one condition that was present

in rule 2BPCIMPCPR1 (the transaction time of the trade no longer needs to be equal or larger than the transaction time of the order for the rule to be triggered).

The updated version of the ARIS Data Validation Rules Configuration Document was published on 22 September 2022 and is available [here](#).

The update of the ACER REMIT Information System Data Validation Document

The updated ACER REMIT Information System Data Validation document was published on 28 July 2022 on the ACER website.

The update featured the addition of a new rule (Rule 2BPCIMPCPR1_1) in Chapter 5.7.1, Field No 1: ID of the market participant or counterparty.

Access the updated document [here](#).

The update of the List of accepted EIC codes

The third 2022 quarterly update of the List of accepted EIC codes was published on the REMIT section of the ACER website on 30 September. The new edition of the List of Accepted EIC incorporates five new EICs as requested by stakeholders. Furthermore, 39 codes referring to non-EU natural gas connection points will be delisted by the end of 2022.

The next update of the List of accepted EIC codes will occur by the end of Q4 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.

Access the latest List of accepted EIC codes [here](#).

342 REMIT breach cases under review at the end of the third quarter 2022

ACER had 342 REMIT cases under review at the end of Q3 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.

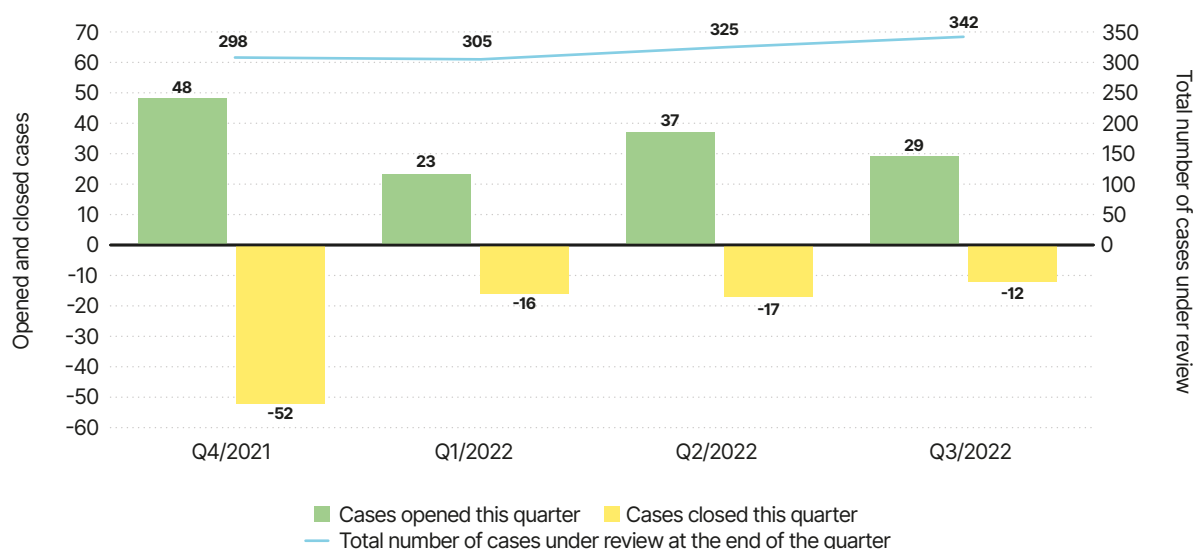
Figure 3 shows the number of cases that were under review by ACER at the end of Q3 2022.

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 3: 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
23 June 2022	CNMC (ES)	GASELA GMBH, SOLSTAR Limited	Article 5	EUR 12,000,000	Appeal Possible	Link
2022	ANRE (RO)	PREMIER ENERGY SRL	Article 5	500,000 RON (approx. 101,073 EUR)**	Under appeal	Link
2022	ANRE (RO)	TINMAR ENERGY S.A.	Article 5	500,000 RON (approx. 101,073 EUR)**	Under appeal	Link
19 May 2022	CRE (FR)	Engie SA	Article 3	EUR 80,000	Final	Link
25 April 2022	CRE (FR)	Electricité de France SA	Article 3 and Article 4	EUR 500,000	Appeal Possible	Link
25 April 2022	CRE (FR)	EDF Trading Limited	Article 5	EUR 50,000	Appeal Possible	Link
2022	ANRE (RO)	EFT FURNIZARE S.R.L.	Article 5	400,000 RON (approx. 80,954 EUR)**	Final	Link
2022	ANRE (RO)	WE POWER TEAM S.R.L.	Article 5	451,022 RON (approx. 91,272 EUR)**	Under appeal	Link
2022	ANRE (RO)	NOVA POWER & GAS S.R.L.	Article 5	400,000 RON (approx. 80,977 EUR)**	Final	Link
2022	ANRE (RO)	QMB ENERG S.R.L.	Article 5	400,000 RON (approx. 80,977 EUR)**	Final	Link
2022	ANRE (RO)	TRANSFORMER ENERGY SUPPLY S.R.L.	Article 5	400,000 RON (approx. 80,977 EUR)**	Final	Link
2022	ANRE (RO)	A ENERGY IND S.R.L.	Article 5	340,294 RON (approx. 68,893 EUR)**	Under appeal	Link
2022	ANRE (RO)	NEXT ENERGY PARTNERS S.R.L.	Article 5	200,000 RON (approx. 40,443 EUR)**	Final	Link
2022	ANRE (RO)	ENTREX SERVICES S.R.L.	Article 5	400,000 RON (approx. 80,842 EUR)**	Final	Link
2022	ANRE (RO)	ENERGIATAVERDE. RO FURNIZARE S.R.L. (fostă APURON ENERGY S.R.L.)	Article 5	400,000 RON (approx. 80,842 EUR)**	Final	Link
2022	ANRE (RO)	ALIVE CAPITAL S.R.L.	Article 5	400,000 RON (approx. 80,842 EUR)**	Final	Link
2022	ANRE (RO)	ALIVE CAPITAL S.R.L.	Article 5	800,000 RON (approx. 161,911 EUR)**	Final	Link

Decision date	NRA, Member State	Market Participant	Type of REMIT breach	Fine	Status	Source
2022	ANRE (RO)	XPV S.A.	Article 5	800,000 RON (approx. 161,911 EUR)**	Final	Link
2021	ANRE (RO)	MONSSON TRADING S.R.L.	Article 5	400,000 RON (approx. 80,811 EUR)**	Final	Link
2021	ANRE (RO)	NEXT ENERGY PARTNERS S.R.L.	Article 5	400,000 RON (approx. 80,811 EUR)**	Final	Link
2021	ANRE (RO)	E.ON ENERGIE ROMÂNIA S.A.	Article 5	800,000 RON (approx. 161,740 EUR)**	Under appeal	Link
2021	ANRE (RO)	LJG GREEN SOURCE ENERGY BETA S.R.L.	Article 5	400,000 RON (approx. 80,870 EUR)**	Final	Link
2021	ANRE (RO)	LJG GREEN SOURCE ENERGY GAMMA S.R.L.	Article 5	400,000 RON (approx. 80,870 EUR)**	Final	Link
2021	ANRE (RO)	EFT FURNIZARE S.R.L.	Article 5	400,000 RON (approx. 80,870 EUR)**	Final	Link
2021	ANRE (RO)	A ENERGY IND S.R.L.	Article 5	800,000 RON (approx. 161,636 EUR)**	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.

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