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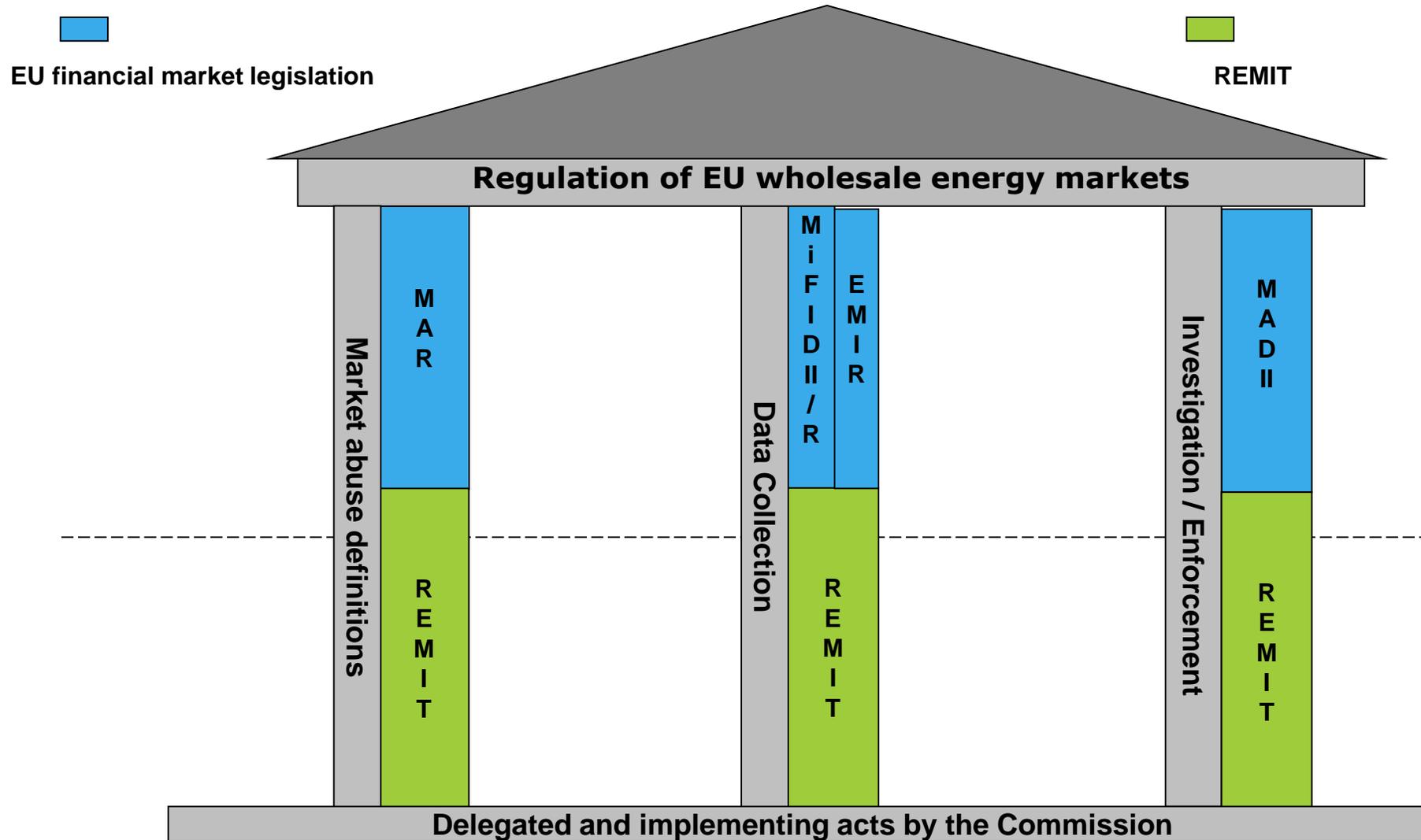
Agency for the Cooperation  
of Energy Regulators



# Applying REMIT in an evolving regulatory landscape: REMIT in light of EU financial market legislation developments

*Market Integrity and Transparency Department*

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- » Directive 2014/65/EU (MiFiD) characterises derivative contracts relating to commodities and emission allowances as financial instruments (Annex I C).
- » Wholesale energy products traded on an OTF that must be physically settled are exempted.
- » As a result, emission allowances fall in the scope of data reporting and market surveillance by ESMA and NCAs since at least 3 January 2018.
- » Points of contact with ESMA and NCAs are mainly data reporting and market surveillance:
  - Investment firms which execute transactions in financial instruments are obliged to report transactions according to Article 26 of MIFIR (Regulation (EU) No 600/2014).
  - Transactions in OTC-Derivatives are reported under EMIR (Regulation (EU) No 648/2012).
  - Provisions to prohibit market abuse now explicitly identify derivative contracts relating to commodities and emission allowances, however, the definitions are not fully aligned with REMIT. Such definitions include insider dealing, market manipulation, and public disclosure of inside information.

- » Adoption of MAR and MiFIR/MiFID II with new definitions, including on the notion of market abuse
  - Article 7(1)(b) and (c) of MAR provides an inside information definition for commodity derivatives and emission allowances.
  - Article 12(1) defines market manipulation as an activity regarding a related spot commodity contract or an auction product based on emission allowances.
  
- » EMIR Refit
  - As part of the Commission's better regulation agenda, the Commission's regulatory fitness and performance programme (REFIT) aims to remove red tape and lower costs, while making EU laws simpler to understand.
  - In this effort, Regulation (EU) 2019/834 of the European Parliament and of the Council of 20 May 2019 changes the entity scope, the clearing obligation, and the reporting obligation, particularly for smaller firms.
  - Published on 28 May 2019, entered into force on 17 June 2019
  
- » MiFiD2/MiFiR review
  - Article 90 of MiFiD obliges the Commission to present a report to the European Parliament and the Council on the functioning and impact of the provisions stipulated by the Directive.
  - The process is currently delayed.
  - A new timetable was proposed in March and takes into consideration the uncertainties introduced by Brexit.
  
- » MAR review
  - Article 38 of MAR obliges the Commission to submit a report to the European Parliament and the Council, together with a legislative proposal for an amendment, if appropriate. This report shall include sanctions, the definition of inside information, the closed period before the announcement of financial reports, the possibilities of establishing a Union framework for order book surveillance, and the scope of the application of the benchmark provisions.

**Thank you for your attention!**



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