


ACER

 Agency for the Cooperation
of Energy Regulators

3rd edition of ACER Guidance on the application of REMIT

Axel Biegert

Co-chair of the WMS Task Force, BNetzA

Tommy Johansson

Market Monitoring Department, ACER

**Public Workshop on REMIT implementation
Ljubljana, 7 November 2013**

- Legal basis
- Nature of the document
- Topics covered

- Article 16(1) of REMIT
 - » “the Agency shall aim to ensure that national regulatory authorities carry out their tasks under [that] Regulation in a coordinated and consistent way”
 - » “the Agency shall publish non-binding guidance on the application of the definitions set out in Article 2 [of REMIT], as appropriate”
- For this purpose, the Agency may issue guidance both on the application of the definitions set out in Article 2 of REMIT and on other issues of application of REMIT.

- Non-binding
- Directed to NRAs to ensure the required coordination and consistency in their monitoring activities under REMIT
- Made public for transparency purposes only
- Updated from time to time to reflect changing market conditions and the experience gained by the Agency and NRAs in the implementation of REMIT
- 1st edition published in December 2011, 2nd edition published in October 2012
- 3rd edition was published on 30 October 2013

- New chapter: Registration of market participants – Chapter 4
 - Role of NRAs in the registration process
 - Which market participants are obliged to register?
 - What information is market participants required to provide?
 - Requirement to keep the registration information up to date
 - With which NRA should market participants register?
 - Deadline for submitting the registration form
- Contracts to final customers (wholesale energy products) – Chapter 3
- Definition of inside information (indicative thresholds) – Chapter 5
- Effective disclosure of inside information (dual approach) – Chapter 7
- Application of insider trading prohibition – Chapter 8

- Registration of MPs under REMIT is first and foremost a national process
- Each NRA shall establish a registration system by which MPs can provide registration information to that NRA no later than 3 months after the adoption of the implementing acts
- NRAs can, if they wish, open the registration process earlier than this
- NRAs are free to use whatever system they deem most appropriate for their market (possibility to use system developed by ACER for the EU register)
- NRAs should ensure that MPs are provided with information on how to register
- NRAs should have systems in place to effectively check the registration information provided by MPs to identify omissions and obvious errors

General rule in REMIT is that contracts to final customers are not wholesale energy products. However, contracts to final customers with a consumption capacity (as a single economic entity) greater than 600 GWh per year shall be treated as wholesale energy products (in so far as consumption takes place on market with interrelated prices).

Further guidance felt necessary for the notion of “consumption capacity” (Article 2 (5) of REMIT) relevant for the understanding of the notion of “wholesale energy products”:

“consumption capacity” means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.

For the purposes of this definition, consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets;

Further guidance on Article 2(5) in the 3rd edition:

- Final customers should calculate their consumption capacity of electricity and gas separately from each other.
- “Consumption [...] *at full use* of that customer's production capacity” is understood as the maximum consumption that a final customer could consume in a year if the consumption assets run fully at all times throughout this year.
- ACER considers wholesale energy markets are increasingly interlinked across Europe why MPs should take into account the consumption capacity of all their plants across the Union.
- For the notion of “*single economic entity*”, guidance can be obtained from international practices of competition law and especially from the precedents of the European Court of Justice.

- Further guidance on the definition of Inside Information (Chapter 5):
 - ACER recognizes the difficulties of setting a single European indicative threshold for inside information due to the wide differences in market sizes, structures and liquidity across Europe
 - **ACER therefore reemphasizes that it is up to MPs to judge whether information that they hold constitutes inside information and therefore needs to be made public**
 - NRAs should ensure that MPs are aware that a planned or unplanned change in the capacity or output of any size at a facility for production, storage, consumption or transmission of natural gas or electricity may constitute inside information if it meets the criteria outlined in Article 2(1) of REMIT

- As regards effective publication of inside information, inside information should be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible (Platforms, Company websites)
- Further guidance in the 3rd edition relates to:
 - The responsibility for disclosure: The obligation to disclose inside information does not apply to a person or a MP who possesses inside information in respect of another MP's business or facilities, in so far as that owner of this inside information is not a parent or related undertaking
 - Effective disclosure requirements: ACER considers that the notion requires that the MP need to fulfill **minimum quality requirements**

- Minimum quality requirements include
 - IT requirements, amongst others the requirement to disclosure to the public on a non-discriminatory basis and free of charge, to disclose via an RSS feed specific for the disclosure of inside information, allowing easy and fast access by the public, language and administrative arrangement requirements
 - A list of fields for urgent market messages describes the contents perceived as relevant to disclose.
- Clarification is provided for the exemption to delay the sensitive information relating to critical infrastructure in Article 4(7) of REMIT.

- Further guidance on the application of Insider Prohibition (Chapter 8):
 - NRAs have to assess on a case-by case basis whether Article 3(3) exemption also applies to market participants that are assigned with duties similar to TSOs.
 - Art 3 (4b) exemption only can only be used to enter into transactions to cover the immediate physical loss.
 - The application of exemption in Article 3(4)(b) of REMIT cannot coincide with the application of Article 4(2) concerning delayed disclosure of inside information, as Article 4(2) requires that the market participant does not make decisions based upon the relevant inside information.

Thank you for your attention!



www.acer.europa.eu