

REMIT enforcement strategy from the perspective of a National Regulatory Authority

EMIT Forum 5-6 September 2019

Thomas vom Braucke, Chief Special Adviser , Danish Utility Regulator

Outline

- REMIT implementation in Denmark
- Cooperation with other authorities
- Publication of cases
- Prioritisation
- Questions or comments

REMIT implementation in Denmark

Danish implementation of REMIT through amendments to:

- Energy supply laws
- Criminal law
- Criminal procedure law

Danish Utility Regulator (DUR) responsible for REMIT enforcement in Denmark

REMIT staff at DUR: Economists and lawyers all working both on REMIT and on market design and monitoring tasks

Cooperation with other NRAs, ACER, other Danish authorities, i.a. Competition Authority and State Prosecutor

Cooperation with State Prosecutor and police

REMIT enforcement within the scope of criminal procedure

Handing over cases

- DUR has to hand over cases to the State Prosecutor if reasonable suspicion of REMIT breach that can be penalized

Administrative orders

- DUR can issue administrative orders to stop behavior in breach of REMIT
- DUR can issue fines until the behavior ceases
- DUR cannot issue fines if a case is handed over to State Prosecutor

Investigatory powers

- DUR can collect any necessary information from any person
- DUR or police can perform on-site inspections

Cooperation with other NRAs and ACER

- Cooperation with a view to ensure coordination, consistency and sharing of best practices
 - through and in the margins of ACER fora, e.g. REMIT Policy Coordination Group and Market Monitoring Standing Committee
 - ad hoc, e.g. on coordination on specific cases as regards to the determination of the NRA responsible for investigation and enforcement.
- Nordic/Baltic, i.a. data sharing arrangement with Finnish and Swedish NRAs and regular dialogue with organised market places

Cooperation with Danish Competition and Consumer Authority

- Scope of REMIT vis-à-vis competition law
- Reporting obligations in energy supply laws
- Meetings and other dialogue with Competition and Consumer Authority both on pending and potential cases and on reports and analysis



Publication of cases as awareness raising and with a view to ensure REMIT compliance

DUR can

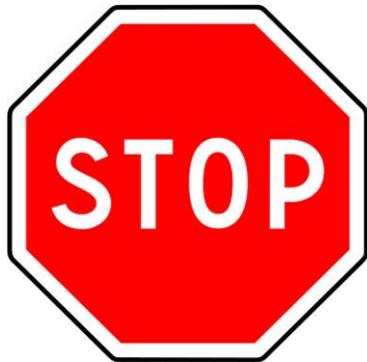
- Publish its decisions in case of a breach of REMIT
- Publish its decisions to hand over a case to the State Prosecutor and publish subsequent final decisions, e.g. by State Prosecutor

DUR has to take into account

- The interests in publishing vs. the interest in confidentiality by 1) market participants (commercial interest), 2) other authorities, i.a. State Prosecutor (jeopardising investigations) and 3) ACER (confidential data)



How to prioritise?



Prioritisation principles in tackling REMIT prohibitions against market abuse

DUR focuses both on prevention and awareness raising and on enforcement.

REMIT enforcement is resource intensive. DUR prioritises REMIT cases taking the following parameters into account (non exhaustive):

- **Severity** and **character** of the possible REMIT breach
- **Market impact** of the case (damage to the market/competition/economic welfare).
- **Preventive or principal importance** of the case, i.a. as an element in clarifying the scope of REMIT.
- **Probability to prove** that a breach has occurred.
- **Resources**, i.a. to collect, analyse and assess market data and to clarify legal questions.

Questions or comments

