

REMIT Quarterly

ACER guidance on the application of REMIT and transaction reporting

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COVID-19 and REMIT business continuity

As published on the website of the European Agency for Cooperation of Energy Regulators (ACER) on 15 March, ACER has requested all ACER staff to telework as of Monday, 16 March 2020, in order to protect the staff from the spread of the COVID-19 virus. The only exceptions are some critical functions necessary for business continuity.

The adoption of such a precautionary measure has not affected the data collection process pursuant to Article 8 of REMIT. The ACER staff continues to monitor the data collection and provides support to stakeholders via the REMIT query form and the Central Service Desk.

Although ACER and many National Regulatory Authorities (NRAs) have switched to teleworking mode, the monitoring of the market continues to be carried out on all levels. Real-time, or close to real-time market surveillance, is still performed by organised market places in accordance with the local arrangements in place. ACER's surveillance team

remains in close touch with market surveillances from organised market places and even holds joint workshops remotely.

The NRAs and ACER continue to receive and monitor suspicious transaction reports. ACER's surveillance system remains supported by its provider and keeps triggering alerts on collected REMIT data without interruptions. ACER's surveillance team is still drafting initial assessments on suspicious market conduct and will continue to share these assessments with the NRAs. The secure handling of confidential information is ensured at any time.

ACER extends certain compliance deadlines

On 17 July 2019, ACER published an update of the ACER Guidance on the application of REMIT in order to clarify the guidance on the disclosure of inside information and to increase transparency in the wholesale energy market. The updates concerned the use of platforms for effective disclosure of inside information and the development of minimum quality requirements by Inside Information Platforms (IIPs). In the light of the COVID-19 outbreak, the deadline by which market participants must become fully compliant with the guidance (i.e. by publishing inside information on an IIP listed by ACER) will be extended to 1 January 2021. ACER has also decided to extend the deadline for market participants' compliance with the new validation rules, which are – as communicated on 10 January 2020 – foreseen to be activated in the second half of 2020. The deadline, which was previously set for 30 June 2020, will be extended to 1 January 2021 as well.

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**SAVE THE DATE
FOR A VIRTUAL MEETING**

ACER Energy Market Integrity and Transparency Forum 2020

The Agency is pleased to announce that the Agency's Energy Market Integrity and Transparency Forum will take place on 9 October 2020 as a virtual meeting.

Additional information will be published on the ACER website at a later stage.

ACER publishes the 5th edition of its Guidance on the application of REMIT

ACER collaborated with the NRAs in order to update the guidance on how to apply the definition of ‘information’ and ‘inside information’ under REMIT.

ACER’s first guidance on the definition of ‘information’ and ‘inside information’ under REMIT was published in 2011 (under the 1st edition of the ACER Guidance on the application of REMIT - ACER Guidance). Several additional amendments were introduced to the document in 2012 and 2013.

Through their work on practical cases over the last seven years, ACER and the NRAs have gained significant additional experience on the application of the definitions of Article 2 of REMIT, in particular on the scope of ‘information’ and the qualification of ‘inside information’. In order to share these lessons learned, ACER and the NRAs have decided to publish the 5th edition of the ACER Guidance, which provides further details on the assessments of ‘inside information’, as foreseen by REMIT, and describes several examples of ‘information’ and ‘inside information’ in the wholesale energy markets.

Chapter 5 of the ACER Guidance has been restructured and is now divided into three main subchapters: (i) introduction, (ii) the concept of ‘information’ under REMIT, and (iii) the definition of ‘inside information’.

The first subchapter explains the application of a two-step test, defined in Article 2(1) of REMIT, which helps assess if a specific fact can qualify as ‘inside information’. The first step consists of determining whether a fact constitutes an item of information under REMIT (given that the concept of ‘information’ under REMIT is narrower than the general concept of information), while the second step requires the use of the four cumulative conditions in order to ascertain whether a piece of information qualifies as ‘inside information’.

The second subchapter focuses on the concept of ‘information’ under REMIT. Article 2(1), second subparagraph, of REMIT introduces the meaning of the term ‘information’ and specifies four different groups of ‘information’. The updated wording specifies several examples of ‘information’ for each

group, and provides guidance on how to apply the concept of a ‘reasonable market participant’ included in letter (d) of Article 2(1) of REMIT.

The last subchapter explains each of the four cumulative conditions included in Article 2(1), first subparagraph, of REMIT. Namely, in order to qualify as ‘inside information’, a piece of information must be: (i) precise, (ii) not public, (iii) related to one or more wholesale energy products, and (iv) likely to significantly affect prices. In addition, ACER clarifies why the trading plans and strategies of market participants are not considered ‘inside information’.

Furthermore, the updated guidance introduces best practices for market participants’ internal compliance rules. They include: (i) a framework for the assessment of whether specific facts can be qualified as inside information, (ii) an adequate workflow mapping of the flow of information and measures on how to handle inside information, and (iii) a list of insiders and/or mechanisms to identify insiders within the market participant.

ACER strongly believes that accurate and up-to-date guidance allows NRAs to investigate and enforce REMIT cases involving inside information in a consistent way. Market participants, on the other hand, can benefit from the best practices identified by ACER in improving their compliance with the obligation to publish inside information and the prohibition of insider trading laid down in REMIT. ACER acknowledges that the implementation of these best practices may require complex internal processes for some market participants which may be delayed during the current coronavirus situation.

Access the [5th Edition of ACER Guidance](#).

Find out more on the [REMIT Portal](#).

Second penalty for market manipulation under REMIT in the French natural gas market

Article 5 of REMIT prohibits any engagement in, or any attempt to engage in, market manipulation on wholesale energy markets.

In a decision published on 16 January 2020, the Dispute Settlement and Sanctions Committee (CoRDIS) of the French NRA, *Commission de Régulation de l'Énergie* (CRE), imposed a fine of EUR 1 million on the company BP Gas Marketing Limited (BPGM) for a breach of Article 5 of REMIT¹. This decision is the outcome of an investigation opened by CRE in July 2016.

CoRDIS held that, between 1 October 2013 and 1 March 2014, BPGM engaged in market manipulation on the French southern virtual gas trading point (PEG Sud)². More specifically, CoRDIS found that BPGM engaged, in 56 instances over the course of 37 trading days, in a combination of different behaviours, which are detailed on page 15 of the decision and include:

- Layering – by piling – a minimum of three sell orders throughout the trading day in the order book, while placing iceberg orders (with large hidden volumes) on the buy side, and withdrawing the sell orders shortly before or soon after purchasing large volumes.
- Back-and-forth transactions within a short period without an economic rationale. These included:
 - purchase transactions (by aggressing sell orders) followed by the placing of one or multiple sell orders at equal or lower prices;
 - sell transactions (by aggressing buy orders) followed by the placing of one or multiple buy orders at equal or higher prices; and
 - the withdrawal of sell orders before aggressing other market participants' sell orders at higher prices.
- Large cancellations or re-pricing of orders (to prices further away from the bid/ask spread) to avoid having the best order.

CoRDIS assessed that BPGM's behaviour was likely to give false or misleading signals to the market as to the supply,

demand and price of energy products on the PEG Sud, thus breaching Article 5 of REMIT, which prohibits market manipulation.

More particularly, BPGM's behaviour created the perception of an abundant supply, given that the sell side of the order book displayed large volumes (notably as a result of the piling of sell orders and transactions on the sell side, as described above), even though BPGM's position on PEG Sud was short during this period.

The described behaviour corresponds to market manipulation as defined in Article 2(2)(a)(i) of REMIT: *'entering into any transaction or issuing any order to trade in wholesale energy products which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products.'*

CoRDIS therefore decided to impose a financial penalty on BPGM as per the French Energy Code, according to which the sanction should be proportionate to the seriousness of the breach, the situation of the person concerned, the extent of the damage, and the benefits derived from the breach. CoRDIS' decision is appealable under the French national law.

A previous CoRDIS decision from October 2018 imposed a fine of EUR 5 million on the company VITOL S.A. for engaging in similar, order-based market manipulation on the PEG Sud³.

On 22 March 2019, ACER published a Guidance Note on layering and spoofing, i.e. trading behaviours that consist of issuing a single large or multiple non-genuine orders to trade on one side of the order book, in order to enter into one or multiple transactions on the other side of the order book. The Guidance Note on layering and spoofing can be found [here](#).

The ACER Guidance and the Guidance Notes (available [here](#)) provide other examples of the types of trading practices which could constitute market manipulation under REMIT.

1 Access the full text of CoRDIS' decision [here](#) (French language).

2 On 1 April 2015, the PEG Sud was merged with the PEG TIGF into the TRS (Trading Region South). On 1 November 2018, the TRS and the PEG Nord were merged into the Trading Region France (TRF).

3 See the REMIT Quarterly Issue No. 16 / Q1 2019, Page 1, available [here](#).

Great Britain's national regulatory authority sanctions Engie Global Markets for spoofing the wholesale gas market

Article 5 of REMIT prohibits any engagement in, or attempt to engage in, market manipulation on wholesale energy markets.

On 5 September 2019, the Great Britain NRA (OFGEM) issued a Decision to sanction Engie Global Markets (EGM) for breaching Article 5 of REMIT.

According to OFGEM's investigation, EGM engaged in market manipulation through spoofing on a number of occasions over a three-month period (between 1 June 2016 and 31 August 2016) on the month-ahead contract for the delivery of natural gas at the National Balancing Point (NBP).

Spoofing consists of issuing single large or multiple non-genuine orders at the same price level on one side of the order book, in order to enter into one or multiple transactions on the other side of the order book.

According to Ofgem, EGM's transactions or orders:

- gave, or were likely to give, false or misleading signals as to the supply, demand, or price of wholesale energy products;
- secured, or were likely to secure, the price of wholesale energy products at an artificial level.

The spoofing behaviour was conducted by a trader working in the name and on behalf of EGM, in order to increase its trading profits. OFGEM considered that EGM failed to take appropriate measures to prevent the breach from happening or to detect it. OFGEM noted that EGM had some measures in place, however, they were inadequate at the time to detect and prevent the REMIT breach.

EGM fully cooperated with OFGEM's investigation. Since August 2016, EGM has taken measures to help prevent this behaviour from happening again by, for example, increasing surveillance of trading activity undertaken on its behalf by its traders to ensure compliance with REMIT.

When setting the sanction, OFGEM took into consideration the relevant aggravating and mitigating factors. By settling this investigation early, EGM qualified for a 30% discount on

the initially proposed fine (a sanction of approximately EUR 3.21 million). The final sanction applied was approximately EUR 2.3 million. EGM accepted to pay the sanction.

The ACER Guidance lists spoofing as one of the behaviours that could constitute market manipulation under REMIT through false or misleading orders or transactions and price positioning (available [here](#)).

In March 2019, with a view to provide more details on the assessment of the spoofing and layering behaviours under REMIT, ACER published a Guidance Note (Guidance Note 1/2019) covering these type of behaviours. The Guidance Note can be found [here](#).

According to ACER's Guidance Note, spoofing requires the issuing of a single large or multiple non-genuine orders on one side of the order book, followed by the execution of one or more transactions on the opposite side of the order book. A market participant issues these orders to influence other MPs' behaviour, for example by creating the impression that there is a stronger selling or buying interest at decreasing or increasing price levels than there actually is.

Non-genuine orders are issued in order to enter into transactions at better conditions (price or volume) on the other side of the order book. These transactions are executed after the issuing of non-genuine orders on the opposite side of the order book. A genuine order can be issued either before or after issuing the non-genuine ones, while the transactions should occur within a period that allows the non-genuine orders to influence the behaviour of other MPs. Non-genuine orders are often cancelled after the transactions take place.

The Guidance Note explains why spoofing could represent a manipulative behaviour under REMIT and provides a non-exhaustive list of indicators that NRAs are recommended to use in order to identify the behaviour. Many of these indicators were used by OFGEM when analysing EGM trading behaviour and helped to successfully streamline the investigation and enforcement of the case.

First sanction imposed under REMIT by the Czech NRA for failure to report wholesale energy market transactions to ACER in a timely manner

Article 8 of REMIT requires market participants, or persons acting on their behalf, to report records of transactions, including orders to trade, to ACER.

The Czech NRA (ERU) adopted its first REMIT enforcement decision, in which it concluded that the market participant ALPIQ ENERGY SE (ALPIQ) breached Article 8 of REMIT by failing to report wholesale energy market transactions in a timely manner.

ERU found that ALPIQ failed to report (backload) 34 transactions concluded before 7 October 2015 within the mandatory deadline of 5 January 2016.

According to ERU, ALPIQ's transactions meet the definition of wholesale energy product in relation to the supply of electricity as laid down in Article 3(1)(a)(vi) of REMIT Implementing Regulation No 1348/2014.

Article 7(6) of REMIT Implementing Regulation No 1348/2014 establishes the following rule for the backloading of records of transactions undertaken before the entry into force of the Implementing regulation (7 October 2015): 'details of wholesale energy contracts which were concluded before the date on which the reporting obligation becomes applicable and remain outstanding on that date shall be reported to ACER within 90 days after the reporting obligation becomes applicable for those contracts.'

In line with Article 12(2) second subparagraph of REMIT Implementing Regulation No 1348/2014, the reporting obligation for these ALPIQ's transactions was established on 7 October 2015 and the transactions had to be reported (backloaded) to ACER within 90 days, i.e. by 5 January 2016.

As of 30 June 2017, ACER's information system ceased accepting the backloading of transactions from market participants.

In September 2017, ALPIQ contacted ERU's REMIT team with a request for assistance with the backloading of its transactions.

On 1 November 2017, ACER reintroduced the possibility of backloading transactions. ALPIQ backloaded the 34 transactions on 9 and 15 February 2018. In practice, ALPIQ reported these transactions with a delay of 590 to 603 days.

ERU concluded that 34 transactions from ALPIQ were not reported to ACER within the legal deadline, which resulted in a breach of Article 8 of REMIT. According to the Czech Energy Act, this behaviour can be qualified as 34 minor offenses. On that basis, ERU adopted a fine of approximately EUR 11,250. ERU's decision is final and the fine has already been paid by ALPIQ.

Table 1 – Overview of market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions

Decision date	NRA, Member State	Market Participant	Type of REMIT breach	Fine	Status	Source
25 March 2020	Ofgem (UK)	InterGen (UK) Ltd, Coryton Energy Company Ltd, Rocksavage Power Company Ltd, Spalding Energy Company Ltd	Article 5	£ 37,291,000 (approx. EUR 42.5 million)*	Final	Link
3 January 2019	VERT (LT)	UAB Geros dujos	Article 5	EUR 28,583	Final	Link
19 December 2019	CRE (FR)	BP Gas Marketing Limited	Article 5	EUR 1,000,000	Appeal possible	Link
December 2019	MEKH (HU)	Valahia Gaz S.R.L.	Article 5	HUF 30,000,000 (approx. EUR 90,000)	Under appeal	Link
September 2019	MEKH (HU)	MAVIR Magyar Villamosenergia-ipari Átviteli Rendszerirányító Zártkörűen Működő Részvénytársaság	Article 5	HUF 1,000,000 (approx. EUR 3,000)	Final	Link
5 September 2019	OFGEM (UK)	Engie Global Markets	Article 5	£ 2,128,236.00 (approx. EUR 2,393,427.80)	Final	Link
20 February 2019	BNetzA (DE)	Uniper Global Commodities SE + Two traders	Article 5	EUR 150,000 and fines of EUR 1,500 and EUR 2,000 for each trader respectively.	Final	Link
21 December 2018	Prosecutor/DUR (DK)	Neas Energy A/S	Article 5	153,000 DKK (approx. EUR 20,400)*	Final	Link
28 November 2018	CNMC (ES)	Multienergía Verde, S.L.U.	Article 5	EUR 120,000	Under appeal	Link
28 November 2018	CNMC (ES)	Galp Gas Natural, S.A.	Article 5	EUR 80,000	Final	Link
30 October 2018	Prosecutor/DUR (DK)	Energi Danmark A/S	Article 5	DKK 1,104,000 (approx. EUR 147,000)*	Final	Link
5 October 2018	CRE (FR)	VITOL S.A.	Article 5	EUR 5,000,000	Under appeal	Link

Note: Article 18 of REMIT specifies 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.

* This amount includes both (i) the fine and (ii) the confiscated profit.

REMIT documentation updates

New online forms to facilitate stakeholder communication

Efficient and well-organised communication with its stakeholders is essential to ACER. To that end, ACER launched newly designed online forms in February 2020 in order to facilitate communication with its many stakeholders in the field of REMIT, which include over 120 registered reporting mechanisms, 80 organised market places, more than 14,000 market participants, and 13 Inside Information Platforms. ACER has not only made the existing query forms, such as the REMIT query form, more user-friendly, but has introduced additional forms as well – for instance, a new form has been developed and made available on the REMIT Portal for the registration of Inside Information Platforms. An updated EIC mapping form dedicated to the reporting and mapping

of delivery points or zones will also be released soon, while the redesigned online forms that are not publicly available on the REMIT Portal have been communicated separately to each stakeholder group.

The new online forms allow ACER to manage all stakeholder queries and communication related to REMIT in a more central way. Stakeholders are invited to continue to use the REMIT query form (available [here](#)) as the main communication channel in order to submit questions related to REMIT policy, data reporting, the List of organised market places, and the List of standard contracts.

Update of the List of accepted EIC codes

As announced in REMIT Quarterly issue No. 19, ACER began updating the List of accepted EIC codes on a quarterly basis in 2020.

On 30 March, the List was updated on the REMIT Portal with six new codes, all of which are related to the supply or transportation of natural gas. According to the application of validation rule 2ADPDPOZR1, reporting parties are now able to use the new codes for the population of field (48) 'Delivery point or zone'.

The next update of the List of accepted EIC codes will occur in late June 2020. The involved parties are invited to check the Annex VI of 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.

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