

Implementation of Regulation (EU) No 1227/2011 (REMIT) and Commission Implementing Regulation (EU) No 12348/2014 (REMIT IR) in the Contracting Parties of the Energy Community

CONCEPT PAPER

I. INTRODUCTION

In a competitive and open market it is of central importance that citizens, businesses and national authorities have confidence in the integrity of energy markets. Unless effectively addressed, the potential for abusive and unfair trading practice undermines public trust, deter investment, increases volatility of energy prices and may lead to higher energy prices in general. This in turn may also reduce competitiveness of other sectors and industries e.g. energy intensive industries.

Objective of this paper is to provide grounds for expanding and harmonizing the energy market integrity and transparency framework in the Contracting Parties (CPs) of the Energy Community (EnC).

In the EU, for physical electricity and gas trading, such framework is composed of:

- Regulation (EU) No 1227/2011 (REMIT)
- Implementing Regulation (EU) No 12348/2014 (REMIT IR)
- The Guidance, Q&A, FAQ, etc. issued by the Agency for the Cooperation of Energy Regulators (ACER)

On 28 December 2011 the prohibitions under REMIT of insider trading, market manipulation, the obligation for market participants to publish inside information and the requirement for persons professionally arranging transactions (PPATs) to establish and maintain effective arrangements to detect market abuse and to notify suspicious cases to NRAs, came into force in the EU. Reporting obligation became effective later on 7 October 2015 (contracts executed via organized markets) and 7 April 2016 (contracts executed bilaterally) after the entry into force of REMIT Implementing Regulation (REMIT IR) on 7 January 2015.

II. RATIONAL FOR IMPLEMENTATION OF REMIT IN THE CONTRACTING PARTIES

The volume of cross-border trading is increasing significantly between the CPs and between the CPs and Member States (MSs). Energy markets in general are evolving. Wholesale prices of electricity and gas are increasingly determined based on supply and demand in several countries or regions. If prices go up in one country market participants buy electricity in another and export it to a higher-priced area. This is supported by the high correlation between prices of neighboring countries and coordinated capacity allocation processes. Price correlations are also strong between interrelated commodities, especially electricity and gas.

With the increasing level of liquidity and market depth the number of contracts and different types of traded products increases. While this brings efficiency and flexibility in the market it also brings a greater potential for market abuse and therefore less confidence in the market.

The third energy package defines obligations for CPs to provide for competitive and non-discriminatory market arrangements, but does not set out standards to ensure the integrity of such

markets. In the EU this gap is filled with the introduction of REMIT and therefore it is crucial for the well-functioning of the pan-Energy Community market that this gap is also filled in the CPs as soon as possible to avoid any loopholes which create potential for market abuse both in EU MSs and CPs due to well interconnected markets.

We have identified the following as to why we need to implement REMIT in the CPs:

Importance of harmonized regime to avoid any loopholes

EU MSs and CPs of the EnC are very well interconnected and trading activity between them is increasing with significant pace, in particular electricity trading between MSs and CPs of Southeast Europe and gas trading between MSs and Ukraine, increasing therefore the level of correlation between the prices. The increasing level of correlation means that activity of a market participant in one market may significantly affect the neighboring markets creating possibilities for cross-border market abuses without having the need to conclude a single transaction between two countries. An abusive activity (under REMIT) in a CP may have significant impact in the MSs surrounding such CP. Furthermore, an information which is considered an inside information in the EU under REMIT is not considered as such in the CPs although the very same information may be considered as inside under existing regime in the EU due to its impact in the prices of wholesale energy products.

Importance of market integrity and transparency in the CPs

Notwithstanding great progress made in transposing the third energy package, electricity markets in the CPs are still characterized with the lack of transparency and subsequently lack of confidence. It is already a practice that vertically integrated companies coordinate and share information on the availability or unavailability of the generation or consumption assets before such information is published. In the absence of level playing field and clear definition of what constitutes market abuse, market participants may engage in activity which according to REMIT is prohibited. Market participants in CPs are allowed to trade on an information which in EU would be considered an inside information. Market participants can also negotiate and pre-agree before they put the offers on screen and execute them. There are also other activities which are not explicitly defined as market abuse, which in turn result with market uncertainty and distorted signals for trading and investments.

Unbundling of national incumbents in the CPs together with de-regulation of prices and other measures starts having a positive impact on trading activity in general in the Southeast Europe region. Furthermore, the Secretariat has started working with CPs for necessary adaptation and implementation of electricity and gas network codes and guidelines in the EnC. Together with this the commitment¹ of CPs to establish day-ahead markets and subsequently market coupling as well as regional balancing mechanism has set a clear target for regional market integration between CPs and with MSs. As we move towards open and competitive energy markets in the EnC it is of crucial importance that in parallel we work on market integrity regime to ensure that the national regulatory authority of CPs are equipped with necessary powers to detect and take measures against any abusive behavior in the market. This is important for boosting the confidence in the energy markets of the EnC.

ACER's involvement: less costs and better monitoring

Considering the interconnected nature of energy markets and pace with which the CPs are moving towards EU target model it is clear that a regime which guarantees market integrity is implemented in the EnC as soon as possible and as early as possible while the CPs are already going through significant market reforms. It would be costly and non-efficient from the monitoring point of view if a separate regime is put in place for CPs. In this context, ACER's role is crucial. The role of ACER in

¹ Under the Berlin Process the six Contracting Parties of Western Balkans (WB6) committed to implement the so-called 'soft measures' https://www.energy-community.org/portal/page/portal/ENC_HOME/AREAS_OF_WORK/WB6

collecting market data and monitoring should remain the same for CPs as it currently is for MSs under REMIT. This would, not only make the process more efficient for CPs, but would ensure better and a more effective monitoring regime is implemented for EU as well, in particular for the markets where behavior in CPs may significantly affect trading activity and prices in the surrounding MSs.

III. COMPETENCES OF ACER, ENTSO FOR ELECTRICITY AND ENTSO FOR GAS

To ensure full and harmonized implementation of REMIT in the CPs, the competences of ACER, ENTSO for Electricity and ENTSO for Gas pursuant to Regulation (EU) 1227/2011 (REMIT applicable in the EU) for EU MSs should remain the same for CPs under the adapted text of REMIT. In the adapted text, Secretariat has proposed an Article for this purpose. The Secretariat also proposed amendments to the Treaty which support the involvement of ACER regarding CPs.

With regards to ENTSO for Electricity and ENTSO for Gas, assuming such competences for CPs would not require significant changes to the existing processes. This is considering the fact that anyway CPs have the obligation to submit the fundamental data to ENTSO for Electricity and ENTSO for Gas under the third energy package² and electricity transparency regulation³.

IV. CONCEPT FOR IMPLEMENTATION IN THE CONTRACTING PARTIES

The Secretariat has prepared adapted versions of REMIT and REMIT IR and will discuss this with all the relevant stakeholders, such as European Commission, ACER, ENTSO for Electricity, ENTSO- for Gas, CPs and market participants.

The following is the step-wise approach for implementation in the CPs:

STEP 1

Deploying REMIT regime in the CPs for implementation of market transparency and integrity measures:

- Prohibition of insider trading
- Requirement for publication of inside information
- Prohibition of market manipulation

This step includes also the requirement to ensure the national regulatory authorities are equipped with necessary powers to detect and take measures against abusive behavior

The following are the Articles of REMIT adapted text for CPs that become effective under this step:

- Articles 1-5 (scope, definitions, prohibition of market abuse)
- Articles 13-15 (enforcements powers for regulators, right to appeal and obligations for PPATs)
- Article 18 (penalty regime)

Proposed implementation date for this step is 1 July 2018.

INTERMEDIATE STEP

This is an intermediate step before the requirement for trade data and fundamental data reporting kicks in as per STEP 2 below. Market participants engaged in reportable products or are owners of fundamental information should register with national regulatory authority. National regulatory

² Electricity Directive (2009/72/EC), Natural Gas Directive (2009/73/EC), Electricity Regulation (714/2009/EC) and Natural Gas Regulation (715/2009/EC)

³ Regulation (EU) No 543/2013

authorities should use ACER's registration platform for registration of market participants to ensure consistency.

Articles 9 (registration of market participants) of REMIT adapted text for CPs becomes effective under this step.

Proposed implementation date for this step is 1 March 2019.

STEP 2

This step includes the requirement for trade data and fundamental data reporting as well as market monitoring regime.

The following are the Articles of REMIT adapted text for CPs that become effective under this step:

- Articles 7-8 (market monitoring, data reporting)
- Articles 10-12 (information sharing, data protection, operational reliability)
- Articles 16-17 (cooperation, professional secrecy)

In the same transposition deadline with the Articles from this step, REMIT IR adapted for CPs should also become effective.

Proposed implementation date for this step is 20 June 2019.

V. KEY CONTENT ADAPTATIONS OF REMIT AND REMIT IR FOR CONTRACTING PARTIES

Secretariat applied the general adaptations that are necessary for implementing REMIT in the CPs. In addition to general adaptations the following are the main content changes:

- The key content change is the omission of derivatives from the scope of REMIT for CPs. In the EU, derivatives are outside REMIT scope because they are covered in the framework of financial regulation. In the REMIT adapted version for CPs, Secretariat proposes a change in the definition of wholesale energy products by removing 'derivatives' from the definition of wholesale energy products. Cooperation and data sharing with ESMA and national competent authority is removed in line with omission of derivatives.
- As mentioned above, the Secretariat proposes an Article (in Step 2) that deals with the competences of ACER, ENTSO for Electricity and ENTSO for Gas. This is to ensure consistency regarding competences for CPs as for MSs.

Article 6 and 20 of REMIT that empowers European Commission to adopt delegated acts under REMIT is not applicable for CPs. The aim is to have an article in the Ministerial Council's decision adopting REMIT for the EnC which states that:

- *“The Energy Community shall apply the delegated or implementing acts adopted by the European Commission referred to in Article 6 or 8 of Regulation 1227/2011. The relevant delegated or implementing acts shall be adopted by the Permanent High Level Group, following the procedure laid down in Article 82 of the Treaty”*
- Requirements of ACER regarding data protection and operational reliability, etc. are not duplicated as such requirements are already applicable for ACER under REMIT.

- Article 19 (International relations) and Article 21 (Committee procedure) of REMIT are not applicable for CPs therefore has been deleted from the adapted text.

Other adaptations are mainly to ensure proper applicability in the CPs and avoid duplications.

VI. IMPACT ASSESSMENT

Secretariat will develop an impact assessment regarding implementation of REMIT in the CPs. The impact assessment will cover:

- Policy objective
- What are the policy options or alternatives
- Legal impact and procedures required on EnC level and CP level
- Budgetary impact on: market participants, national regulators in CP and ACER

The intention is to present the draft impact assessment results in the Permanent High Level Group (PHLG) meeting of 30 June 2017.

VII. TIMELINE FOR IMPLEMENTATION

The Secretariat plans to put the adapted text for approval in the Ministerial Council meeting of 20 October 2017. The Ministerial Decision will include the transposition deadline with the following effective dates⁴ for all CPs:

- 1 July 2018 for STEP 1
- 1 March 2019 for INTERMEDIATE STEP
- 20 June 2019 for STEP 2

⁴ Dates may be adjusted, subject to further discussions with Contracting Parties, ACER and EC.