The background of the slide is a dark blue globe with glowing blue energy lines and arcs connecting various points across the continents, symbolizing a global energy network.

REMIT in the Energy Community

ECRB Procedural Act

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11 March 2021, 1ST ACER-ECRB REMIT Workshop

Content

REMIT in EU vs. EnC

Cooperation at the EnC level

- Article 16 of REMIT

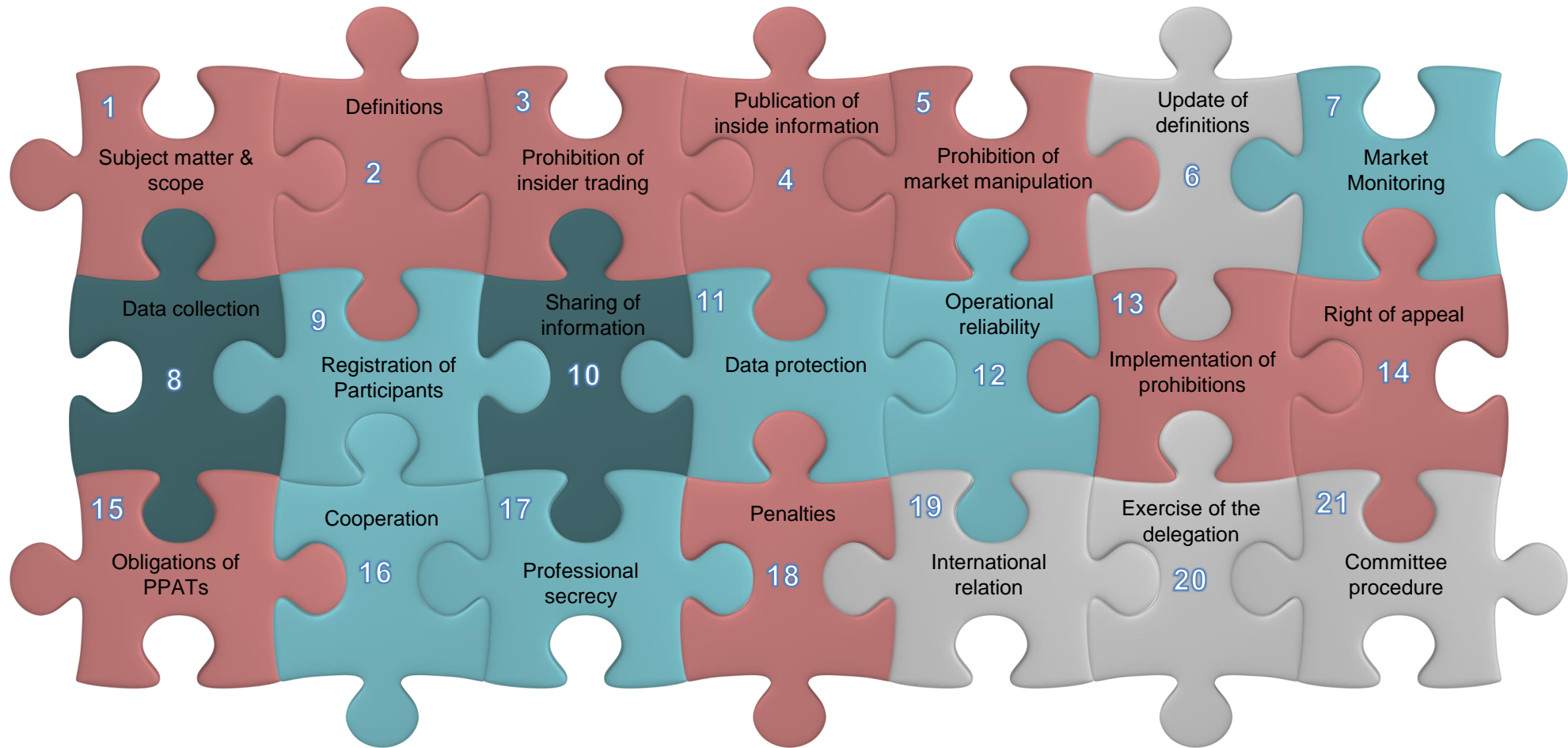
ECRB REMIT WG

- Work programme for 2021

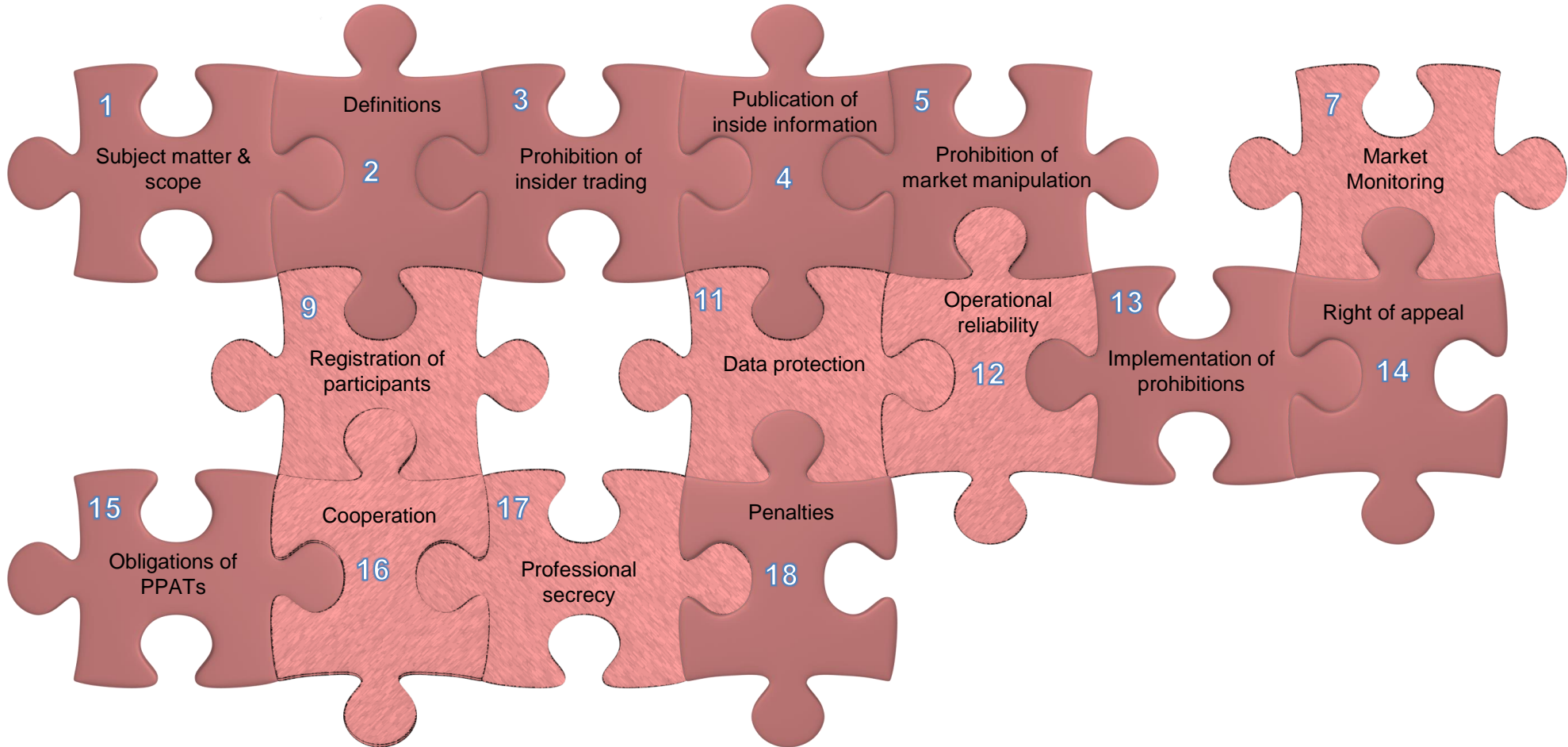
ECRB Procedural Act

- Coordination of NRAs
- Consistent implementation
- Harmonised forms/formats
- Harmonised Guidance

REMIT



REMIT in Energy Community



Cooperation at the Energy Community level (1)

1. The ~~Agency~~Energy Community Regulatory Board shall ~~aim to ensure~~facilitate that national regulatory authorities carry out their tasks under this 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, as appropriate.~~

National regulatory authorities shall cooperate ~~with the Agency and~~ with each other, including at regional level via the Energy Community Regulatory Board for the purpose of carrying out their duties in accordance with this Regulation.

National regulatory authorities; ~~competent financial authorities~~ and the national competition authority in a ~~Member State~~Contracting Party may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.

Cooperation at the Energy Community level (2)

2. National regulatory authorities shall without delay inform the Agency-Energy Community Regulatory Board and the Secretariat in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Contracting Party Member State or in another Contracting Party Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Contracting Party Member State are being carried out in another Contracting Party Member State, it may request the Agency-Energy Community Regulatory Board and the Secretariat to ensure that the requirements of this Regulation are implemented in such Contracting Party. ~~take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.~~

Cooperation at the Energy Community level (3)

3. In order to ensure a coordinated and consistent approach to market abuse on wholesale energy markets:

- ~~(a) national regulatory authorities shall inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;~~
- ~~(b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive;~~
- ~~(c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;~~
- ~~(d) national regulatory authorities shall inform the national competition authority of their Member State Contracting Party, the Commission Secretariat and the Agency Energy Community Regulatory Board where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.~~

Cooperation at the Energy Community level (4)

4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Energy Community Regulatory Board~~Agency~~ suspects that there has been a breach of this Regulation, it shall ~~have the power~~ be entitled:
- (a) to request one or more national regulatory authorities to supply any information related to the suspected breach;
 - (b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;
 - (c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which ~~Member State~~ Contracting Party the breach took place. Where appropriate, the ~~Agency~~ Energy Community Regulatory Board may also ~~request~~ seek the participation of representatives of ~~Agency~~ the competent financial authority or other relevant authority of one or more Contracting Party and/or Member States in the investigatory group.

Cooperation at the Energy Community level (5)

5. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Energy Community Regulatory Board~~Agency~~ of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

- (a) compliance might adversely affect the sovereignty or security of the ~~Member State~~Contracting Party addressed;
- (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Contracting Party ~~Member State~~ addressed; or
- (c) a final judgment has already been delivered in relation to such persons for the same actions in the Contracting Party ~~Member State~~ addressed.

In any such case, the national regulatory authority shall notify the Energy Community Regulatory Board ~~Agency~~ accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, rendering all necessary assistance. The investigatory group shall be subject to coordination by the Energy Community Regulatory Board~~Agency~~.

ECRB REMIT WG

2020 activity

1. Procedural aspects
2. Registration
3. Knowledge building
4. Cybersecurity

2021 activity

1. Regulatory Guidance on REMIT
2. Maintenance of central registry
3. Inside information platform
4. Implementation of REMIT

2022 ... activity

To focus on practicalities of implementation coordination

Updating the guidance on all areas

Recommendations on implementation



ECRB Procedural Act on REMIT

- 1) establish the basis for coordination of NRAs in carrying out their tasks under the REMIT Regulation
- 2) define the process for cooperation via ECRB
- 3) harmonize the templates and formats used by the NRAs
- 4) outline the process for actions to be undertaken by ECRB, and
- 5) address confidentiality concerns in relation to data and information exchange

Roles



NRA

7/REMIT

monitor national markets cooperation via ECRB at regional level

16.2/REMIT

report to ECRB suspected breaches of REMIT in another CP



ECRB

A blue oval containing the text "ECRB". A double-headed blue arrow connects this oval to the "NRA" oval on the left.

16.1/REMIT

ECRB to facilitate cooperation and coordination

16.4/REMIT

ECRB to assess such potential breach:

- request additional info from affected NRAs
- request NRA(s) to commence an investigation
- establish investigatory group of affected NRAs

Phase 1: communication

Template 1



3 weeks

Phase 2: next steps
(3 weeks after Phase 1)



No action

Propose to invite establishment of the investigation group



Request info

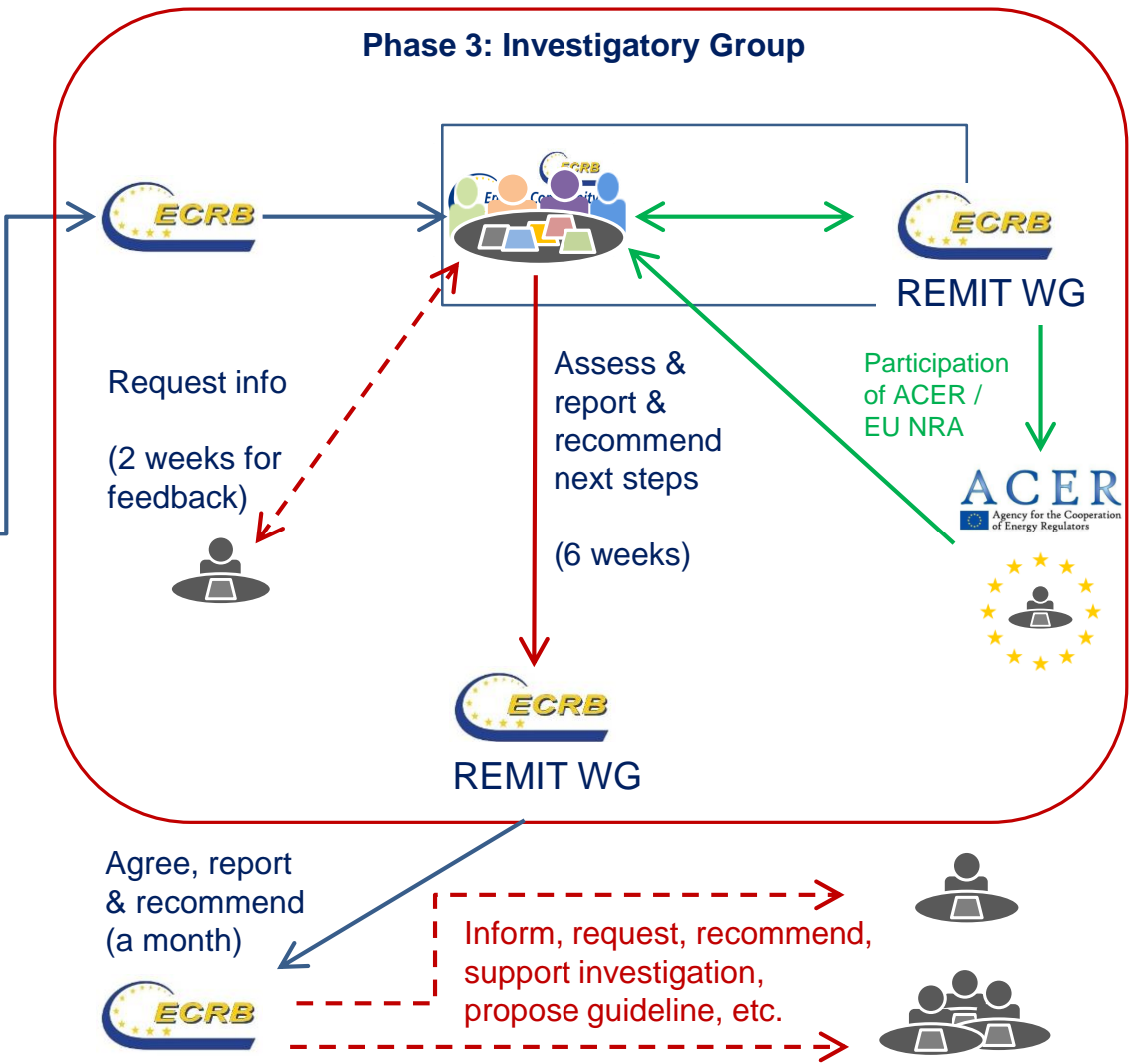
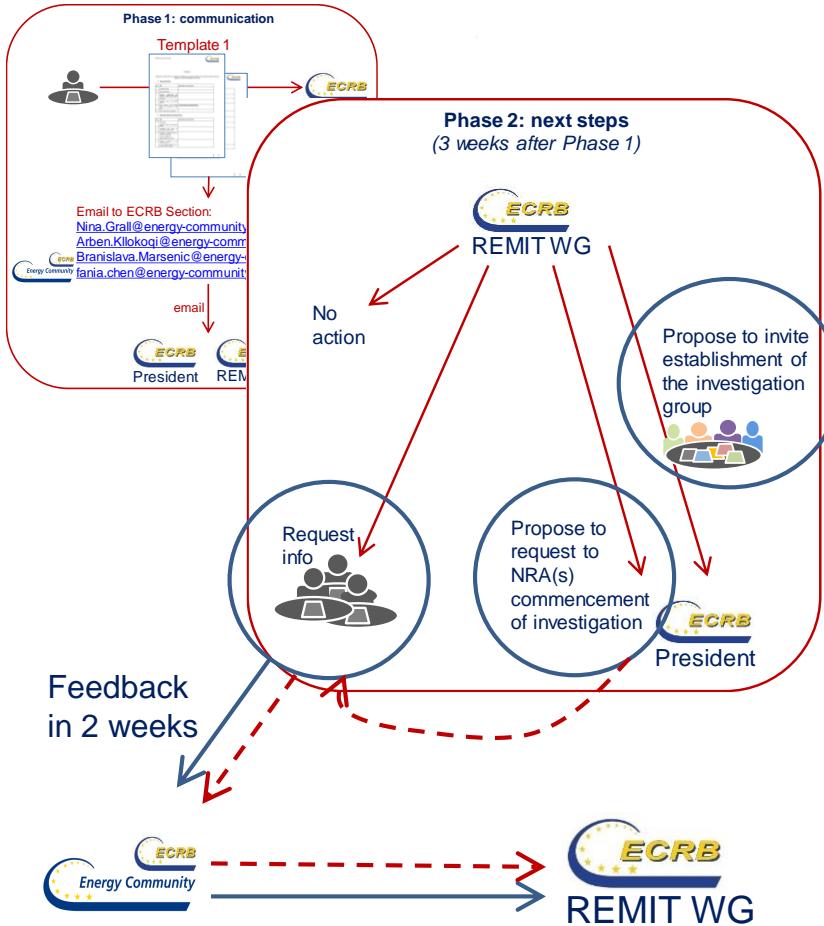
Propose to request to NRA(s) commencement of investigation



Email to ECRB Section:
Nina.Grall@energy-community.org
Arben.Kllokoqi@energy-community.org
Branislava.Marsenic@energy-community.org
fania.chen@energy-community.org

email





6/Confidentiality requirements

NRA obliged to preserve confidentiality of information

ECRB procedural Act requires coordination and exchange of information, which may include also information that are confidential, commercially sensitive, business secrets, etc.

Upon exchange of such information, the ECRB, ECRB REMIT WG, including IG shall sign NDA

Reports by REMIT WG and IG may be tagged as confidential

ECRB

Template 2

MUTUAL NON-DISCLOSURE AGREEMENT

This Mutual Non-Disclosure Agreement is made by and between _____ (hereinafter 'the 1st Party') and _____ (hereinafter 'the 2nd Party') [to be added subject to involved regulators]

WHEREAS the 1st Party and the 2nd Party (and the 3rd Party etc if needed) (hereinafter 'the Parties') have an interest in participating in discussions and cooperate for the purpose of implementation of Regulation 1227/2011 on wholesale energy market integrity and transparency¹ and related coordination under the Energy Community Regulatory Board (ECRB) pursuant to ECRB Procedural Act 01/2020 wherein either Party might share information with the other that the disclosing Party considers to be proprietary and confidential to itself according to the definitions of Article 2 of ECRB Procedural Act 01/2020 and the provisions of its Article 6 (hereinafter 'Confidential Information');

THE PARTIES AGREE AS FOLLOWS:

- The Parties shall act in line with ECRB Procedural Act 01/2020 and, in particular, Article 6 thereof to identify confidential information and business secrets (hereafter "Confidential Information") to the other Party [Parties].
- When informed of the proprietary and confidential nature of Confidential Information that has been disclosed by the other Party, the receiving Party (hereinafter 'the Recipient') shall, for a period of ____ years from the date of disclosure, refrain from disclosing such Confidential Information to any contractor or other third party without prior, written approval from the disclosing Party and shall protect such Confidential Information from inadvertent disclosure to a third party using the same care and diligence that the Recipient uses to protect its own proprietary and confidential information, but in no case less than reasonable care. The Recipient shall ensure that each of its employees, officers, directors, or agents who has access to Confidential Information disclosed under this Agreement is informed of its proprietary and confidential nature and is required to abide by the terms of this Agreement. The Recipient of Confidential Information disclosed under this Agreement shall promptly notify the disclosing Party of any disclosure of such Confidential Information in violation of this Agreement or of any subpoena or other legal process requiring production or disclosure of said Confidential Information.
- All Confidential Information disclosed under this Agreement shall be and remain the property of the disclosing Party and nothing contained in this Agreement shall be construed as granting or conferring any rights to such Confidential Information on the other Party. The Recipient shall honor any request from the disclosing Party to promptly return or destroy all copies of Confidential Information disclosed under this Agreement and all notes related to such Confidential Information. The Parties agree that the disclosing Party will suffer irreparable injury if its Confidential Information is made public, released to a third party, or otherwise disclosed in breach of this Agreement and that the disclosing Party shall be entitled to obtain injunctive relief against a threatened breach

¹ As adopted and adapted for the Energy Community based on Decision of the Energy Community Ministerial Council 2018/01/MC-ENC.

1
2

7/Reporting breaches to NRAs and/or ECRB


NRAs to publish Template 3 as a mean through which market participants (and others) report suspected breaches

NRAs to ask PPAT to use such template as well

ECRB Section will publish to allow also reporting directly to ECRB

NRAs should also accept reporting/info on breaches that come via other means

ECRB Procedural Act 01/2020



Template 3
Reporting potential breaches of the REMIT Regulation to regulators and/or ECRB pursuant to Article 7 of ECB Procedural Act 01/2020

Background: any legal or physical persons may report suspicious behavior in the wholesale electricity and gas markets and any potential breaches of the REMIT Regulation to the National Regulatory Authority and/or the Energy Community Regulatory Board (ECRB) using this form. The form should be published by each regulator of the Contracting Parties.

A. General information

No.	Title	Information to be provided
1	Reporting party: -market participant -PPAT -other competent authority -other	(name of the person/firm/authority and address)
2	Person(s) representing the reporting party in relation to this report and their contact details (phone and email)	
3	Email address of the NRA for submission of the report	(form published by ECRB will contain a link to all NRA webpages – specifically to the form published by NRA)
4	Email address of the ECRB Unit for submission of the report	(to be provided by ECRB in case the reporting party wants to submit it to ECRB as well)
5	Submission date	
6	Other information (if necessary)	

B. Information about the suspected breach

No.	Title	Information to be provided
1	Commodity: -Electricity and/or gas wholesale market	

1

2


3

8/Use of exemption and delay of inside information

Exemptions in line with Article 3.4 of REMIT shall be requested/notified to NRAs –T4

Delay of publication in line with Article 4.2 of REMIT shall be requested/notified to NRAs –T5

ECRB Procedural Act 01/2020



Template 4

Reporting to the regulators the use of exemption related to insider trading pursuant to Article 8(1) of ECRB Procedural Act 01/2020

Background: under Article 3.4(b) of REMIT, the prohibition on insider trading does not apply to: "transactions entered into by electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities the sole purpose of which is to cover the immediate physical loss resulting from unplanned outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in accordance with the transmission system operator's commitment in order to ensure safety and secure operation of the system. In such a situation, the relevant information relating to the transactions shall be reported to the national regulatory authority. This reporting obligation is without prejudice to the obligation set out in Article 8(1)".

Market participants using such exemption should use this form to report the use of exemption to the regulators. The form should be published by each regulator of the Contracting Parties of the Energy Community.

A. General information


No.	Title	Information to be provided
1	Name and address of reporting market participant	
2	Person(s) representing the reporting party in relation to this report and their contact details (phone and email)	
3	Type of market participant: electricity or gas producer, operator of electricity or gas infrastructure, other <small>(provide a description)</small>	
4	Email address of the NRA, to which the report is submitted (to be provided by NRA)	(provided by NRA)
5	Submission date	
6	Other information (if necessary)	

B. Information on the inside information concerned

No.	Title	Information to be provided
1	Name of the facility	
2	Installed capacity of the facility	

1

ECRB Procedural Act 01/2020



3	Unavailable capacity	
4	Date, including hours, of the unplanned outage (from-to)	
5	Other details	


C. Indication of the transaction concerned

Further below provide details of the contract concluded to cover the immediate physical loss resulting from unplanned outages. The details should include, at least: contracted capacity, price per traded unit, length of the contract (date/hours of delivery), counterparty and date and time when concluded.

Additional information may be requested by the regulator.

2

ECRB Procedural Act 01/2020



Template 5

Reporting to NRA delayed publication of inside information pursuant to Article 8(2) of ECRB Procedural Act 01/2020

Background: under Article 4(2) of the REMIT Regulation a market participant "may under its own responsibility temporarily delay the public disclosure of inside information, so as not to prejudice its legitimate interests provided that such interests are not likely to be harmed by the public and provided that the market participant is able to ensure the confidentiality of that information and does not make decisions relating to trading in wholesale energy products based upon that information. In such a situation the market participant shall without delay provide that information, together with a justification for the delay of the public disclosure, to the relevant national regulatory authority."

The following form should be used by market participants submitting such information to regulators. The form should be published by each regulator of the Contracting Parties.

A. General information


No.	Title	Information to be provided
1	Name and address of reporting market participant	
2	Person(s) representing the reporting party in relation to this report and their contact details (phone and email)	
3	Type of market participant: electricity or gas producer, operator of electricity or gas infrastructure, other <small>(provide a description)</small>	
4	Email address of the NRA, to which the report is submitted (to be provided by regulator)	(to be provided by the regulator)
5	Submission date	
6	Other information (if necessary)	

B. Information on the inside information concerned

No.	Title	Information to be provided
1	Name of the facility	
2	Installed capacity of the facility	
3	Unavailable capacity	

1

ECRB Procedural Act 01/2020



4	Date, including hours, of the expected outage (from-to)	
5	Expected time of public disclosure	
6	Address(es) where the information will be disclosed	
7	Other details	

C. Justification for delayed publication

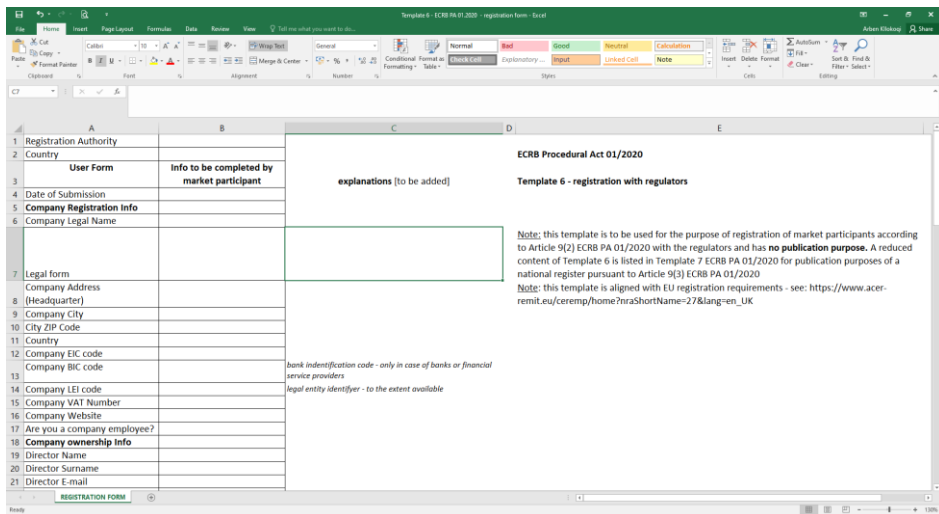
(to be provided by the market participant)

Additional information may be requested by the regulator.

2

9/Registration of MP – national registry

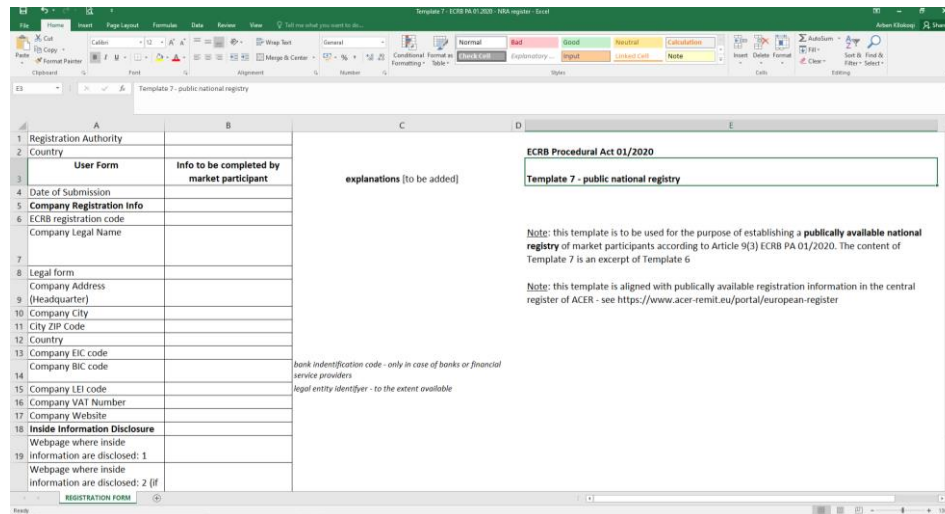
Template 6 – for registration



Template 6 - ECRB PA 01/2020 - registration form - Excel

1	Registration Authority			
2	Country			ECRB Procedural Act 01/2020
3	User Form	Info to be completed by market participant	explanations (to be added)	Template 6 - registration with regulators
4	Date of Submission			
5	Company Registration Info			
6	Company Legal Name			Note: this template is to be used for the purpose of registration of market participants according to Article 9(2) ECRB PA 01/2020 with the regulators and has no publication purpose . A reduced content of Template 6 is listed in Template 7 ECRB PA 01/2020 for publication purposes of a national register pursuant to Article 9(3) ECRB PA 01/2020 Note: this template is aligned with EU registration requirements - see: https://www.acer-remit.eu/ceemp/home?mraShortName=27&lang=en_UK
7	Legal form			
8	Company Address			
9	(Headquarter)			
10	Company City			
11	City ZIP Code			
12	Country			
13	Company EIC code			
14	Company BIC code	bank identification code - only in case of banks or financial service providers		
15	Company LEI code	legal entity identifier - to the extent available		
16	Company VAT Number			
17	Company Website			
18	Are you a company employee?			
19	Company ownership Info			
20	Director Name			
21	Director Surname			
22	Director E-mail			

Template 6 – for national registration



Template 7 - ECRB PA 01/2020 - NDA register - Excel

1	Registration Authority			
2	Country			ECRB Procedural Act 01/2020
3	User Form	Info to be completed by market participant	explanations (to be added)	Template 7 - public national registry
4	Date of Submission			
5	Company Registration Info			
6	ECRB registration code			
7	Company Legal Name			Note: this template is to be used for the purpose of establishing a publicly available national registry of market participants according to Article 9(3) ECRB PA 01/2020. The content of Template 7 is an excerpt of Template 6
8	Legal form			
9	Company Address			
10	(Headquarter)			
11	Company City			
12	City ZIP Code			
13	Country			
14	Company EIC code			
15	Company BIC code	bank identification code - only in case of banks or financial service providers		
16	Company LEI code	legal entity identifier - to the extent available		
17	Company VAT Number			
18	Company Website			
19	Inside Information Disclosure			
20	Webpage where inside information are disclosed: 1			
21	Webpage where inside information are disclosed: 2 (if			

9/Registration of MP – central registry

REMIT corner at the Energy Community / ECRB page

Includes REMIT related documents, templates and central registry

Registry in excel format – developed based on national templates

Info by NRAs to be submitted on the format agreed (excel)
Full national registry submitted to ECRB Section (excluding
confidential info)

ECRB to include the info on the central registry



THANK YOU FOR YOUR ATTENTION

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