

ECRB Guidance on REMIT Regulation

1. Introduction

The need for transparency and market integrity and the aim to avoid market abuse on wholesale energy markets lead to the introduction of Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency (REMIT). REMIT entered into force on 28 December 2011 for in the European Union.¹ Certain requirements of REMIT, such as data reporting entered into force later in 2015 and 2016.

For the Energy Community Contracting Parties (CP), the REMIT Regulation was adopted by the Ministerial Council of the Energy Community by Decision 2018/10/MC-EnC of 29 November 2018 (hereinafter 'EnC REMIT'). The Decision adapted the EU version of the REMIT Regulation and made a so-called "REMIT light" version legally binding for the CPs that excludes central data collection by the Agency for the Cooperation of Energy Regulators (ACER) and replaces ACER's responsibilities on coordination of investigations by a related competence of the Energy Regulatory Board (ECRB).²

The purpose of this document is to provide guidance on understanding of EnC REMIT and facilitate its consistent implementation in the Contracting Parties.

Guidance issued by ACER including also in the form of Questions & Answers (Q&A) in relation to REMIT, will be considered as basis guidance for implementation of the EnC REMIT by the Contracting Parties. ECRB recommends the use of guidances issued by ACER as a comprehensive guide on REMIT. The ACER guidances are accessible via <https://documents.acer-remit.eu/>

In addition, and based on the ACER guidances, the present ECRB guidance addresses areas or questions which have been identified in the ongoing implementation process in the Contracting Parties but are not covered by ACER guidance (hereinafter 'ECRB guidance'). The ECRB guidance is developed in the form of Q&As and will be updated regularly to the extent further questions or clarifications will be required by the market participants and other stakeholder. ECRB invites market participants and other stakeholders to raise any related enquiry with the regulatory authorities of the Contracting Parties using the query form provided in the Annex of this document.

¹ Published in the Official Journal of the European Union no. L 326, p 1 et seq, on 8 December 2011.

² Decision 2018/10/MC-EnC set a deadline for transposition of the REMIT Regulation of 29.11.2019 and an implementation deadline of 29.5.2020.

2. General Questions and Answers on the application of REMIT

Q1: What is REMIT?

A1: Regulation (EU) No 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency (REMIT) entered into force in the European Union on 28 December 2011.

For Energy Community, this Regulation was adopted and included in the Energy Community *acquis communautaire* on 29 November 2018 by Decision of the Ministerial Council. The Decision incorporated REMIT in a version which is very similar to the version applicable in the EU – however, adapted the EU version by excluding central data collection by the Agency for the Cooperation of Energy Regulators (ACER) and by replacing ACER's responsibilities on coordination of investigations by a related competence of the Energy Regulatory Board (ECRB), so called "REMIT light" [see further A3].

Where the present guidance refers to general concepts, requirements and objective of the REMIT Regulation, the acronym 'REMIT' will be used without any distinction whether it is REMIT version applicable in the EU or Energy Community. To avoid confusion, when referring to specific provisions applicable in the Energy Community, the acronym 'EnC REMIT' will be used.

Q2: What is the goal of REMIT and why is it important?

A2: REMIT sets the framework for wholesale market integrity through prohibition of certain abusive activity in the market and enhancing the transparency. Further, it empowers the national regulatory authorities (NRAs) or other competent authorities to undertake measures against participants that engage in abusive activity in the wholesale energy market.

The main goal of the REMIT as stated in the first recital of the Regulation is to: *"ensure that consumers and other market participants can have confidence in the integrity of electricity and gas markets, that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse"*.

More precisely, REMIT aims to preserve and improve the benefit of final energy consumers by promoting fair competition and increasing transparency of the wholesale energy markets. In that way, it should be ensured that the final consumer will pay the fair price for energy and natural gas.

For this purpose the REMIT Regulation defines and introduces terms and actions in order to organize and secure the proper functioning of the wholesale market, such as:

- prevention of market abuse by defining "inside information" and "market manipulation",
- introduction of sector-specific, comprehensive and efficient monitoring of the wholesale markets,
- introduction of prohibitions of abusive behaviour which undermines the integrity of the wholesale energy markets and setting penalties for breaches.

Stronger NRAs, a surveillance regime and greater transparency in wholesale energy markets reduce the risk of market manipulation and price distortion. This is crucial to ensure that consumers pay the fair price for their gas and electricity consumption. It also helps creating a level-playing field for all market participants.

Q3: What is the difference between REMIT applicable in the EU and EnC REMIT?

A3: EU REMIT³ is applicable in the EU Member States and consists of the following key requirements:

1. Prohibition of market manipulation and insider trading,
2. Obligation to publish inside information,
3. Reporting of data to ACER,
4. Pan-EU market monitoring and surveillance performed by ACER,
5. Other provisions such as, powers to the NRAs, penalty regime, requirements for Persons Professionally Arranging Transactions (PPAT), etc.

EnC REMIT⁴ is applicable in the Contracting Parties and consists of the following key requirements:

1. Prohibition of market manipulation and insider trading,
2. Obligation to publish inside information,
3. ECRB has the role of coordinator and facilitator of cooperation between regulators,
4. Other provisions such as, powers to the NRAs, penalty regime, requirements for Persons Professionally Arranging Transactions (PPAT), etc.

ACER's role in data collection and surveillance is not foreseen in the EnC REMIT version. Also, there is no requirement for regular and centralised data reporting, however this is without any prejudice to national requirements in the Contracting Parties. The NRAs may request reporting on regular basis or for carrying out investigation.

ECRB will coordinate the work of NRAs on cross-border issues and will issue guidance on consistent application of EnC REMIT.

There are also other minor changes, which are considered as "standard adaptations",⁵ such as when defining the wholesale energy products and markets EnC REMIT refers to "Contracting Parties" instead of "EU and Member States". There are also some provisions that apply specifically to EU, therefore are not included in the EnC.

Q4: Why EnC REMIT does not include data reporting to ACER?

A4: There are few legal, technical and financial reasons as to why data reporting to ACER is not included mirroring the requirement that exists in REMIT applicable in the EU. Two options were discussed:

1. To include the reporting requirement to ACER in EnC REMIT once the Implementing Regulation No 1348/2014 (Implementing Regulation) will be adapted and adopted at a later stage for the Contracting Parties. This option would however have required a clear roadmap and timeline for the adoption of the Implementing Regulation to enable ACER to prepare for data collection, cooperation with NRAs and performance of market surveillance of the markets in the CPs. A related roadmap was not in place at the time of the adoption of the EnC REMIT.

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32017R1001&rid=3>

⁴ https://www.energy-community.org/dam/jcr:4484c612-282e-4727-8bce-bafbd8facab2/REMIT_1227_2011_correlation.pdf

⁵ „Standard“ meaning adaptations that are typically applied when incorporation EU legal acts into the Energy Community legal framework.

2. To exclude the provisions on reporting entirely until there is a clarity on the way forward and in particular in relation to market integration between CPs and EU markets.

The outcome of both approaches is more or less the same, as both imply reporting at a later stage. However the approach to amend EnC REMIT and adopt the Implementing Regulation at a later stage was considered more appropriate. This is without prejudice to the national reporting requirements that are in place or that Contracting Parties consider appropriate in order to ensure better surveillance of the market.

Q5: Are there plans for future centralised reporting and surveillance under EnC REMIT?

A5: Yes, as elaborated in A4, centralised reporting and surveillance remains a target to come at a later stage in parallel with further market integration between Contracting Parties and EU Member States based on the implementation of Network Codes and Guidelines that are currently applied in the EU in the Contracting Parties – in particular related to market coupling.

Q6: Is the Implementing Regulation 1348/2014 applicable in the Contracting Parties?

A6: As currently there is no regular and centralised reporting requirement under EnC REMIT, the Implementing Regulation 1348/2014 is not part of the Energy Community legal framework. This however is without prejudice to the national requirements in the CPs that may use the principles of the said regulation for national-based reporting requirements. In case of doubt, this question should be clarified with the relevant NRA.

Q7: Is my company impacted by EnC REMIT?

A7: If your company

- is active in the wholesale energy market [see the definition in A10] in dealing with wholesale energy products [see the definition in A11]
- which entails (but not limited to) buying or selling electricity and/or gas, capacity for production, transportation and/or storage of electricity and/or gas, or their derivatives

in one of the CPs then your company is bound by EnC REMIT provisions.

Note that also offering to buy or sell wholesale energy products in the market is considered as dealing with such products, hence it is irrelevant if the actual purchase or sale occurred but already the order itself constitutes an activity in the market.

To receive a clear picture of the obligations under REMIT in addition to the present guidance, the EnC REMIT should be read carefully as well as the guidance issued by ACER⁶. In case of need for clarification the NRA in the CP in which your company should be consulted.

Q8: What is the role of NRAs under EnC REMIT?

A8: NRAs, where appropriate in cooperation with other competent authority in the Contracting Parties, shall ensure enforcement of the EnC REMIT rules. This involves, but is not limited to activities related to

⁶ <https://documents.acer-remit.eu>.

- registration of market participants
- providing guidance to ensure a consistent implementation of REMIT
- market monitoring to detect market abuse and ensure that transparency requirements are implemented
- cooperation with regulatory authority from the Energy Community, ECRB and ACER when dealing with abusive behaviour with cross-border impact
- requesting data and information
- carrying out investigation, applying penalty regime (also in cooperation with other national bodies) for EnC REMIT breaches
- report to Energy Community Secretariat on their activities related under EnC REMIT

Q9: What is the role of ECRB under EnC REMIT?

A9: ECRB will facilitate NRAs in carrying out tasks under EnC REMIT in a consistent manner across Energy Community where EnC REMIT is applicable. It will develop guidance, procedures and templates to be used consistently by all NRAs.

ECRB will further facilitate cooperation of the NRAs at the regional level with regards to monitoring of activity that has cross-border impact. It will consolidate all the national registers of market participants registered under EnC REMIT into one Energy Community register.

ECRB will also monitor and report on implementation of EnC REMIT in the CPs.

3. Questions and Answers related to specific REMIT provisions

Q10: How are “wholesale energy products” defined?

A10: Wholesale energy products are Article 2(4) EnC REMIT. In addition, ACER has provided an extensive guidance on the definition of the wholesale market products and contracts that are captured under REMIT.⁷ This definition is valid also in the context of EnC REMIT.

Hence in order not to repeat ACER’s guidance, the present ECRB guidance aims at outlining the differences that exist for the definition for the Contracting Parties compared to EU level.

- (1) *Place of delivery*: In the EU version of REMIT the place of delivery refers to the European Union, while in the EnC REMIT it refers the Contracting Parties.
- (2) *Derivative contracts*: On EU level, the application of a complex legal set of rules for the financial framework enables consistent interpretation of energy derivatives in the EU member States. As such legal framework is not in place in the Contracting Parties, derivative contracts are excluded from Article 2(4) items (b) and (d) EnC REMIT. Consequently, only derivative contracts that are settled based on energy market contracts – defined in the Contracting Parties as financial instruments or not – are under the scope of the EnC REMIT. This depends also on the state of development of the financial regulation in the Contracting Parties and to which financial instruments are used.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not considered wholesale energy products – except, when contracts for supply of electricity and gas are concluded with a consumer that has a consumption capacity equal to or greater than 600 GWh per year at individual plants under the control of single entity. This consumption threshold may be set at a lower level in some Contracting Parties and should be clarified with the relevant NRA.

Q11: How are “wholesale energy markets” defined?

A11: Wholesale energy products are Article 2(6) EnC REMIT. ACER’s guidance on the definition of the wholesale energy markets is also valid in the context of EnC REMIT, hence the present ECRB guidance aims at outlining only the differences that exist for the definition for the Contracting Parties compared to EU level.

REMIT applied in the EU refers to the European Union as the geographic scope of the market in which the wholesale energy products are traded. Under EnC REMIT the geographic scope is the Contracting Parties of the Energy Community.

The definition of wholesale markets includes all markets and timeframes where wholesale energy products are traded, i.e. balancing, re-dispatch and countertrading, short-term markets, forward markets, transportation markets, capacity markets, local flexibility markets for electricity, etc.

⁷ <https://documents.acer-remit.eu>.

Q12: Why Articles 6, 8, 10, 19, 20, 21, 22 are deleted from EnC REMIT?

A12:

- Article 6 does not apply directly to the Energy Community given that any potential update of the definitions of inside information and market manipulation through European Commission's delegated acts will be adapted and adopted separately in the Energy Community.
- Article 8 does not apply to the Contracting Parties. More information on this is provided above.
- Article 19 is specific to the European Union and therefore does not apply to the Energy Community.
- Article 20 refers to powers of the European Commission to adopt delegated acts and as such does not apply to the Energy Community.
- Article 21 is specific to the European Commission and as such does not apply to the Energy Community.
- Article 22 is about entry into force of the Regulation. In the case of Energy Community, the entry into force is part of the Ministerial Council Decision that adopted EnC REMIT.⁸

Q13: How do prohibitions of insider trading and market manipulation apply in the EnC REMIT?

A13: EnC REMIT defines insider trading (Article 3) and market manipulation (Article 2(2)) in the same manner as on EU level, therefore also prohibitions apply in the same manner. The powers of the NRAs to investigate across the Energy Community are highly consistent. However, penalty regimes applicable in the individual Contracting Parties differ [see also A18]. Related questions can be clarified with the respective NRAs.

NRAs may exercise their powers [on regulatory REMIT powers see also A8] directly, in cooperation with other authorities or by addressing to the competent judicial authorities.

Q14: How will the NRAs monitor the market in the absence of data reporting?

A14: NRAs may utilise existing data reporting in context with standard market monitoring procedures, or if they consider it necessary, establish REMIT specific national reporting requirements. Further, regulators can rely on information from Persons Professionally Arranging the Transactions (PPATs), market participants and other whistle-blowers. Such information may trigger further investigations by the NRAs. Regulators can also perform ad-hoc monitoring-investigations on certain market behaviours.

Q15: How will the NRAs cooperate on monitoring cross-border transaction?

A15: EnC REMIT defines the cooperation format in Article 16. Cooperation on cross-border level is done under the umbrella of the Energy Community Regulatory Board (ECRB). NRAs may notify other NRAs on suspicious behaviour with respect to certain cross-border activity. Where needed, NRAs will then jointly form a working group within the set-up of the ECRB and will jointly investigate the suspected breach of the REMIT rules. Cooperation with ACER (and EU NRAs) is possible under within the ECRB structures.

⁸ Decision 2018/10/MC-EnC of 29 November 2018. The Decision set a deadline for transposition of the REMIT Regulation of 29.11.2019 and an implementation deadline of 29.5.2020.

ECRB issued a Procedural Act on EnC REMIT implementation that outlines the cooperation process between the NRAs member of the ECRB. The Procedural Act is accessible at: https://energy-community.org/dam/jcr:07a15679-d2f7-41d8-94be-8b3ca9507377/ECRB_PA_%2001_2020.pdf

Q16: How does registration of market participants work?

A16: Registration of market participants in the EnC REMIT differs from REMIT in the EU. Each market participant active in one or more Contracting Party markets has to register in each Contracting Party with the respective NRA. Registration is required in every Contracting Party where the market participant is active. The process itself is however very straightforward and harmonised among NRAs. Effectively there are similar registration forms and the same data is required for registration.

More details on the harmonisation of registration process can be seen from ECRB Procedural Act on EnC REMIT https://energy-community.org/dam/jcr:07a15679-d2f7-41d8-94be-8b3ca9507377/ECRB_PA_%2001_2020.pdf. For the registration approach applied in the individual Contracting Party, the relevant NRA should be consulted

Q17: Is there a right to appeal against NRAs' decisions?

A17: Yes. When transposing EnC REMIT into the national framework, each Contracting Party has to ensure that there is a suitable mechanism in place, under which a party affected by a decision of the NRA can appeal to a body that is independent of the parties involved and of any government.

Q18: What is the REMIT related penalty regime in the Energy Community?

A18: The penalty regime applied in the Contracting Parties is not harmonised, therefore the respective legal framework should be clarified with the relevant NRAs to ensure better understanding for each Contracting Parties.

ECRB is preparing a report on the penalty regimes applied in the Contracting Parties with respect to EnC REMIT breaches. Once this survey will be published, a link will be provided in the present guidance.