

# Briefing

16 February 2016

## First fines applied for REMIT breaches in Europe

Pursuant to the Regulation 1227/2011 on wholesale energy market integrity and transparency (REMIT), the Agency for the Cooperation of Energy Regulators (ACER) has the obligation to monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. To this end, ACER collects data related to wholesale energy market transactions, including orders to trade.

As data collection under REMIT commenced only in October 2015, until such date ACER had to rely on notifications of suspected breaches of REMIT from the national regulatory authorities (NRAs), persons professionally arranging transactions in wholesale energy products (PPATs), market participants and on information from public sources for the purposes of carrying out market monitoring activities.

As the implementation of REMIT progressed, the number of new cases reported to ACER increased significantly – from 10 in 2012 to 33 in 2014. Towards the end of 2015 there were 47 ongoing cases. The cases reviewed by ACER referred to potential market manipulation in the wholesale electricity market and in the wholesale gas market, potential insider trading cases, potential breaches of the obligation to disclose inside information, potential breaches of the obligation of PPATs to report suspicious transactions. In many cases, no sanctions were applied, but only warnings were given to the involved market participant, as at that time the relevant NRAs had no sanctioning powers.

In the meantime, most of the Member States have adopted rules assigning investigatory and enforcement powers to NRAs. In certain Member States, the investigatory powers of NRAs include possibility to demand information from market participant as well as other sources, to order person(s) to be present at hearings, to perform on-site inspections/dawn raids, to demand access to registries, computer and telecommunication, to freeze assets, to demand that activities violating REMIT cease, to demand a court to issue a temporary prohibition on professional activity. In many Member States sanctions consist in fines, but there are also Member States with a stricter set of penalties for breaches of REMIT obligations, such as imprisonment.

Romania, for example, chose to sanction the breach of the REMIT obligations only with fines ranging from RON 200,000 (approximately EUR 45,000) to RON 400,000 (approximately EUR 90,000). In case of repeated breaches, the fine may go up to 5% of the annual turnover resulting from the relevant regulated activity.

### Iberdrola Case

In the course of its investigation of Iberdrola, Spain's competition and market regulator (CNMC) established that the company had deliberately increased prices between November 20th and December 13th 2013 by reducing the electricity offer volume, despite the fact that the prices were "*notably higher*" than in previous weeks. The company has been accused of withholding the water held in their Duero, Tajo and Sil hydroelectric reservoirs, thereby raising the cost of electricity during the dates in question. The report showed that hydroelectric reserves at the reservoirs in question were greater than in previous years. The date coincided with a government contract bid used to determine the household prices for the first trimester of the following period. The price hikes made the tendering price go up, leading to a 10 % rise in consumer electricity prices.

In December 2015 CNMC fined Iberdrola €25 million for a breach of Article 5 of REMIT (market manipulation in the energy sector).

Iberdrola's CEO declared that it will appeal the CNMC decision: "*Those days, we were buying, not selling. We are a producer of wind and hydro. There was a tremendous drop, no wind. If we do not have enough energy to supply our customers, we are forced to buy. So if we are forced to buy, we have no interest to increase the price.*"



## Elering Case

A disruption occurred in the functioning of the 650 MW Eastlink 2 undersea electricity transmission cable between Estonia and Finland as a result of maintenance and dredging works conducted at the cable by Elering, the Estonian TSO in June 2014.

The Estonian Competition Authority accused Elering of failure to disclose the maintenance works to the market in a timely manner. The regulator fined Elering EUR 10,000 for a breach of its obligations under Article 4 of REMIT (ie failure to disclose inside information in a timely manner).

Elering's CEO declared it will challenge the decision, as it deems that Elering acted in compliance with disclosure rules applied by other TSOs namely, disclosure of information about a disruption takes place when the disruption has been approved by the respective system operator's electricity system control center.

## Some practical implications

As mentioned, data collection under REMIT commenced in October 2015 for standard contracts, and for nonstandard contracts will commence in April 2016. Moreover, PPATs (for example exchanges or brokers) have the obligation to notify the relevant NRA without delay if they reasonably suspect that a transaction might breach the prohibition on insider trading or market manipulation. This will make it easier for NRAs and ACER to carry out their monitoring obligations and identify potential REMIT breaches. The application of fines by the Spanish and Estonian regulators may be viewed as proof that NRAs are serious about enforcing REMIT.

From a practical perspective, to avoid compliance issues, market participants should (if they have not done so already) at least:

- determine whether the various areas of their business fall within the scope of REMIT and identify any compliance risks;
- determine what information would meet the criteria for inside information in the markets they operate in, and whether they could come into possession of such information;
- identify employees who regularly come into contact with inside information (for example, operations team or trading staff) and ensure that they receive regular training on market abuse;
- establish an internal reporting system for inside information and ensure that they are able to carry out real time or close to real time disclosure of inside information;
- establish inside information and anti market abuse policies and procedures, assign responsibility and set compliance objectives within the organisation;
- implement robust monitoring systems and controls to detect and prevent market abuse; • implement systems and procedures for compliance with REMIT reporting obligations;
- ensure training for relevant employees on REMIT obligations.

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