

**3rd Meeting of the REMIT Expert Group on wholesale energy market trading –
2 day**

Tuesday, 29 June 2021 from 13:00 to 16:00

Agency staff

Antonio Santos, MSC (partially)

Patrick Luickx, MSC

Tomaz Vizintin, MSC

Martin Godfried, MSC (partially)

Michal Miko, MSC (partially)

Blaz Kladnik, MSC (partially)

Urska Pavic, MSC

Sebastien Sauvagnat, MSC

Volker Zuleger, MIT

Eleonora Nagali, MIT

Iztok Zlatar, MIT

Dimitris Lelovitis, MIT

Ugo Buzelli, MIT

Experts

Karl Peter Horstmann

Aviv Handler

Walter Boltz

Camilla Berg

Guila Migueles

Matti Sohlman

Nadja Keraenen

Piotr Krawczak

Viktoria Medvedeva

Violeta Sliskovic

NRAs

Elena Murea, ANRE

Mircea Urcan, ANRE

Eva Medina, CNMC

Thomas Kawam, CREG

Onno de Vries, ACM

Mahdi Shahrokhi Damavandi, ACM

Malgorzata Wesolowska, URE

Martina Isola, CRE

1. MEETING OPENING PART

The agenda of the current meeting and the minutes of the 2nd REMIT expert group meeting were approved.

None of the attendees of the 3rd Meeting of the REMIT Expert Group raised points in advance of the topical discussions.

2. REPORTING SYSTEM GENERATED ORDERS

The topic of orders generated by trading platforms or other systems was presented for discussion. It was explained that this spans automatically generated orders in intraday trading in SIDC, but also in other timeframes and other platforms.

In general, the overall opinion of the experts is that such orders should be reportable while the responsibility for reporting should be on the Organised Market Places (OMPs) and/or the Persons Professionally Arranging Transactions (PPATs) since they are the ones generating such orders and MPs are often not aware of their existence. It was noted that contractually the MP does not have the possibility to prevent the OMP/PPAT from generating system orders.

3. ORGANISED MARKET PLACES

ACER presented the ACER strategy linked to the regular update of the List of Organised Market Places¹, through which ACER strives to promote transparency in the energy markets as well as to allow reporting parties, NRAs, and ACER analysts to consistently identify the OMPs where orders are placed and trades are concluded. It was highlighted that non listed OMP are likely to expose their clients to violation of Art 8 REMIT, while it is through the MPs awareness that the issue can be addressed.

The experts agreed that a sufficiently precise definition of the OMPs needs to be elaborated (some platforms are hard to identify and in general the OMPs cannot be easily determined)². Potentially, the way forward on that would be in a future revision of the REMIT Implementing Regulation No 1348/2014, within the scope of which REMIT-specific concepts of the various types of organised markets should emerge. In the experts' opinion not all OMPs are adequately incentivised to declare themselves as such and get listed.

4. REVISION OF THE REMIT LEGAL FRAMEWORK

The observations of the experts on the revision of the REMIT legislative framework were presented in a structured way. The chair thanked the experts for the detailed proposals, which were technical and interesting and emphasized the need to determine the way to introduce such proposals appropriately into the regulatory agenda. The need to update the REMIT framework to make it fit for and consistent with the parallel development of other legislation (among others, the fourth electricity package and the revision of the TEN-E framework as well as the forthcoming revision of the internal gas market framework) was highlighted. Furthermore, it was noted that more than 10 years from its publication, the time for the commencement of the revamping process of REMIT legislation has arrived.

¹ Cf. latest version of the latest version of the List of Organised Market Places, available at <https://www.acer-remit.eu/portal/organised-marketplaces>

² Cf. Article 2(4) of the Implementing Regulation : a trading venue is an OMP if it offers the possibility of trading wholesale energy products, via a multilateral system, which brings together (or facilitates the bringing together of) multiple third party buying and selling interests in a way that leads to the conclusion of a contract. These include electricity and gas exchanges, brokers and other persons professionally arranging transactions, and trading venues as defined in Article 4 of Directive 2014/65/EU (MiFID 2).

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The experts agreed that at the next expert group in September it should be discussed how to bring these views forward.

5. CAPACITY MARKETS VS REMIT OBLIGATIONS

The topic was moved to the second day, in the timeslot on the REMIT Q&As.

The following positions were discussed:

- Two proposals on how to comply with the transaction reporting obligation when dealing with Capacity Auctions and Reliability Options with physical delivery were presented;
- The experts expressed some doubts on whether the outcome of the capacity auction shall be reported under REMIT (*i.e.* non-standard contract reporting proposed in the slides);
- In case ACER will confirm the need to report the outcome of the Capacity Auctions and Reliability Options, the experts agreed on the need to have a dedicated Q&A on REMIT clarifying such aspect, as well as updated guidance on transaction reporting, in particular examples in the Annex II of TRUM and explicit indications in TRUM or in the FAQ on transaction reporting;
- In case of reselling of a capacity agreements, one expert questioned whether the new contractual relation involves the TSO. In such a case, the experts agreed on the proposal of the novation to be reported;
- On the reporting of the capacity agreement as outcome of the capacity auction or the reliability option auction, an expert highlighted that it would have to assess its relevance in terms of market surveillance;

ACTION POINT: Additional comments on the proposed transaction reporting approaches to be provided by the experts via email (REMIT.expertgroup@acer.europa.eu) by September.

6. BALANCING, REDISPATCHING, LOCAL MARKETS AND REMIT

ACER outlined the background of the presentation related to the REMIT Quarterly article on real-time operational security and REMIT, leading to market abuse³. The aim of the presentation is to have the ensuing discussions impact the way to look at balancing, redispatching and local markets⁴.

The first part of the presentation focused on the balancing markets and REMIT, with general questions to the Experts – is the imbalance settlement a wholesale energy product (WEP) and does that matter? Following with the questions connected to the imbalance exchange between TSO and BRP, market manipulation on the imbalance settlement occurred either directly or through the energy or capacity market.

Next, concrete example on the imbalance price spikes from 2020 and 2021 were presented, alongside an example of high balancing energy prices and the needed information to make an assessment on what constitutes REMIT breaches.

The second part of presentation focused on the topic of redispatching and REMIT. Experts were asked if redispatching is seen as WEP and whether it can count as an opportunity cost for the day-ahead market. The angle of contact status between TSOs and redispatched actors was raised. Further questions focused on the type of behaviour involving redispatching that could be market abuse, as well as manipulative INC-DEC gaming, covering not only prices but also volumes.

³ Cf. [REMIT Quarterly, Q12021](https://documents.acer-remit.eu/wp-content/uploads/REMITQuarterly_Q1_2021_a1.0.pdf), 6, available at : https://documents.acer-remit.eu/wp-content/uploads/REMITQuarterly_Q1_2021_a1.0.pdf

⁴ According to Art. 2(26) of [Regulation \(EU\) No 543/2013](#), the term 'redispatching' refers a measure activated by one or several system operators by altering the generation and/or load pattern in order to change physical flows in the transmission system and relieve a physical congestion.

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Finally, the topic on the **Local (flexibility) markets & REMIT** was addressed albeit not exhaustively due to time constraints, and will be further discussed in the forthcoming meetings. Notably, several questions were raised on the topic, linked to possible examples of local markets where the buyer is active on the WEM and the seller is not, and to the specific characteristics raising REMIT concerns.

ACTION POINT: Experts have been invited to submit further questions and/or add their comments with respect to the local (flexibility) market as well as the other topics presented (via the functional mailbox remit.expertgroup@acer.europa.eu, by 20/8/2021).

7. UPDATED Q&A ON REMIT

The Expert Group members provided their feedback on the Q&A 7.III.12 under the following lines:

- The experts highlighted the need to have a clear indication on the application of Article 4 obligation when dealing with information related to SSOs and LSOs. Even though they are not MPs, it has been proposed to ACER and NRAs to exercise their soft power to have a proactive and correct application of the Inside Information disclosure.
- On LSOs and SSOs it has been also highlighted that sometimes TSOs are the first to have the information on LSOs and SSOs. If they publish such information via a standard communication channel (*i.e.* not by following the ACER Guidance on the application of REMIT on inside information disclosure), TSOs do not proactively disclose such information as they are not affected by the insider trading prohibition.
- With reference to the “best practice” indicated in the Q&A of having an agreement for the sharing of information beneficial for the inside information disclosure, the experts highlighted that typically contracts include confidentiality and non-disclosure agreements, especially in long-term contracts. Such legal arrangements are restrictive and often prevent the introduction of the abovementioned best practices. The experts would wish to have some guidance on how to comply with the REMIT disclosure obligation without breaching the confidentiality agreements in order to avoid stopping trading.
- The experts also highlighted the need to set clear thresholds for the disclosure of inside information, in order to avoid misalignments between different companies when assessing the presence of inside information. Thresholds would ensure harmonization of REMIT application. However, it was clarified that ACER lacks the legal competence to alter the definition of Article 2.1 of REMIT by introducing thresholds, and further enhancements of the disclosure of inside information would require a revision of the REMIT legal framework, although ACER strives to ensure a consistent application of the definition of inside information under REMIT.
- An expert proposed to have a clear indication on what is and what is not inside information, as some events are not necessarily considered an inside information outside the EU.
- Another expert stressed the need to have a clear indication of the potential risks of publishing wrong information when a market participant discloses information referred to another market participant.
- On the subject of Storage System Operators (SSOs) and LNG System Operators (LSOs), it was highlighted that Article 4 places a clear obligation on the MPs. There would hence be the need for a revision of REMIT in order to address the responsibilities of the SSOs and LSOs, as Guidance and Q&As would not be sufficient.

New and prospective Q&As were also introduced for discussion before the experts. In particular:

- ACER presented one question that might trigger the preparation of a new Q&A on the reporting of fundamental data when dealing with a fluctuating, structured, unavailability;
- The experts have been asked to provide through email, by the end of August, their feedback on the specific case presented and whether they believe a Q&A on this will be necessary;

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- ACER also presented a new draft Q&A on the transaction reporting obligation for institutional market participants managing RES incentives. The draft Q&A will be presented to the NRAs for discussion in September.

ACTION POINT: The experts have been asked to provide by email their feedback on the proposed draft Q&A, as reported on, by 31/08/2021.

8. ACER GUIDANCE REVAMPING

ACER presented the progress of the ACER Guidance on the application of REMIT and the feedback received, in particular on Sections 2, 5 and 6. ACER thanked the experts for the additional comments. Subsequently, ACER briefed the experts on the comments received and explained how they were incorporated in the text. It was further announced that the 6th edition of the ACER Guidance on the application of REMIT would be endorsed and published in July 2021⁵. Subsequently, an open session for the public presentations of the Guidance is scheduled around October.

AGREED ACTION POINTS	
ACTION POINT 1: CAPACITY MARKETS	Additional comments on the proposed transaction reporting approaches to be provided by the experts via email (REMIT.expertgroup@acer.europa.eu) by September.
ACTION POINT 2: BALANCING, REDISPATCHING, LOCAL MARKETS	Experts are invited to ask further questions, add their comments with respect to the local (flexibility) market or the other topics present to the functional mailbox by 20/8/2021. (remit.expertgroup@acer.europa.eu).
ACTION POINT 3: Q&A DOCUMENT	The experts have been asked to provide by email their feedback on the proposed draft Q&A, as reported on slide 12, by 31/08/2021 (remit.expertgroup@acer.europa.eu).

⁵ Cf. 6th edition of ACER Guidance on the application of REMIT, ACER website: ACER Guidance on REMIT application | www.acer.europa.eu