

Discussion Paper

Disclosure of inside information according to Article 4(1) of Regulation (EU) No 1227/2011 through platforms

1. Introduction

Article 4(1) of Regulation (EU) No 1227/2011 (hereafter “REMIT” or “the Regulation”) obliges market participants to publicly disclose inside information which they possess in respect of business or facilities which the market participant concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part, “in an effective and timely manner”. The obligation applies since 28 December 2011.

However, unlike the Transparency Directive 2004/109/EC for EU financial markets, the Regulation does not further define what might be considered as an effective and timely disclosure of inside information. Article 4(4) of the Regulation only states that the publication of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations, constitutes simultaneous, complete and effective public disclosure, but it does not specify that it also constitutes timely disclosure.

2. Impact and compliance with Article 4(1) of the Regulation

In its 1st edition of non-binding ACER Guidance, issued pursuant to Article 16(1) of the Regulation, the Agency considered that inside information should be disclosed in a manner that it is capable of disseminating it as widely as possible. This is why the Agency believed that the disclosure of inside information through platforms has its merits and this disclosure mechanism is thus given priority. However, the Agency, at least for an interim period, also considered the disclosure of inside information which market participants possess through their own website if adequate transparency platforms do not yet exist.

Although in some Member States platforms for the disclosure of inside information were or are currently being established, either through modifications of transparency platforms according to Regulation (EC) No 714/2009 and (EC) No 715/2009, or through newly-created platforms, the Agency perceives the current situation as still lacking adequate platforms for the disclosure of inside information across the EU, in particular in wholesale gas markets, and therefore a lack of transparency in the disclosure of inside information.

3. Emerging issues to enhance transparency in the disclosure of inside information

The Agency still considers that inside information should be disclosed in a manner that is capable of disseminating it as widely as possible and that the disclosure of inside information through platforms has its merits, in particular in view of the proposed Regulated Information Services described in the Public Consultation Document on the ACER Recommendations on the REMIT records of transactions and implementing acts on data collection. In this Consultation Document the Agency foresees the reporting of inside information to the Agency through intermediaries, the so-called Regulated Information Services. These Regulated Information Services could not only report the inside information on behalf of the market participants to the Agency, but also disclose inside information on behalf of the market participants to the public.

This is why the Agency presents the following options to enhance transparency in the disclosure of inside information under REMIT:

- Option A: Disclosure through existing and future transparency platforms
The disclosure of inside information could be performed through existing national or regional and future central transparency platform(s) on the basis of Regulations (EC) No 714/2009 and (EC) No 715/2009. However, this would mean that these platforms would have to be adapted in order to ensure a timely disclosure of inside information, for instance through the establishment of urgent market message tools. Such an approach could particularly be an option for the wholesale electricity market where such transparency platforms already widely exist, but would be more difficult to implement for the wholesale gas market where only few transparency platforms exist.

- Option B: Nomination of regional or national inside information platforms by NRAs in consultation with market participants
The Agency could recommend to NRAs to nominate national or regional platforms for the disclosure of inside information in consultation with market participants, either through a top-down or bottom-up approach. NRAs would notify their nominations to the Agency. The Agency would publish a list of platforms allowing for a timely and effective disclosure of inside information according to Article 4(1) of REMIT. Besides existing transparency platforms from TSOs, operators of energy exchanges or gas hubs could be the obvious candidates for such specific platforms for the disclosure of inside information. Such approach could be rather quickly implemented and lead to the establishment of platforms by the end of 2012.

Both options would not preclude a central platform being created for Europe. In any case, each of the inside information platforms would collect data and pass this in a common format to ACER for distribution to the market as described in ACER's public consultation document on the recommendations on the records of transactions and implementing acts (so-called Regulated Information Services). However, the setting up of such a solution requires significant resources and will be more time consuming compared to Option A and B.

4. Conclusions

The Agency wishes to enhance the transparency in the disclosure of inside information through platforms. It will present the aforementioned options at its public workshop on 19 July 2012 in Ljubljana and invites for written feedback on these options by 31 July 2012.