ACER
Agency for the Cooperation of Energy Regulators

Note from the Director to the Board of Regulators and the Administrative Board

Implications of the budgetary prospects for the Agency and of the results of the NRAs questionnaire for the implementation of REMIT

1 Background

1.1 The implementation of REMIT

The activities of the Agency with respect to REMIT can be divided into two stages:

(i) The ***implementation stage***, in which the Agency puts in place the IT tools and the procedures - including on data exchange with NRAs and other authorities, at national and EU level, with which the Agency will cooperate - for effectively monitoring wholesale energy markets. This stage started with the entry into force of REMIT on 28 December 2011. Since then, the Agency has issued two editions of the Guidance on the application of the REMIT definitions, a document defining the Registration Format and its Recommendations to the European Commission on the records of transactions. Since mid-2012, the Agency has also focused on the development and deployment of the IT system for market participants' registration and the effective monitoring of the markets in wholesale energy products. In recent months however these activities have been slowed down due to the lack of the necessary financial resources. The development activities will have to be completed within six months of the adoption, by the European Commission, of the Implementing Acts on the records of transactions, when the reporting obligation on market participants will take effect and the full monitoring framework should therefore be in place. As the adoption of the Implementing Acts is expected to take place in the first half of 2014, the development stage needs to be completed by mid-2014.

(ii) The ***operational stage***, in which the Agency will be responsible for actively monitoring trading in wholesale energy markets. This involves *inter alia* the collection of trade and fundamental data, to be reported by market participants and other reporting entities, the screening of such data, in the light of the state of the energy systems, to identify instances of possible market abuse and to notify them to the national competent authorities who are responsible for investigation and enforcement. The Agency will also be responsible for coordinating the investigations. Finally, the Agency will have to assess the operations and the transparency of different categories of market places and ways of trading and to make recommendations as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. It may also evaluate whether any minimum requirement for organised markets could contribute to enhanced market transparency. However, since the prohibitions and obligations of REMIT already apply since 28 December 2011 to market participants and persons professionally arranging transactions, the Agency was forced from the beginning to review and to coordinate suspected cases of breaches of REMIT.

1.2 The Budgetary Prospects

- For the current year

The EU Budget for 2013 was adopted on 12 December 2012. It envisaged a contribution to the Agency of € 7,369,795 which, together with the assigned revenues from the 2011 surplus, led to a total budget of € 8,941,220. This is approximately € 3 million lower than the draft Agency Budget adopted by the Administrative Board on 5 March 2012. On 19 December 2012, the Administrative Board adopted the 2013 Budget of the Agency in line with the contribution from the EU Budget. The € 3 million shortfall corresponds to the investment planned in 2013 to allow the Agency to substantially complete the REMIT implementation stage with the deployment of the REMIT-related IT infrastructure by the first quarter of 2014, to ensure the timely launching of the monitoring operation.

Since the beginning of this year, DG ENER has been working towards transferring funds in the order of € 3 million (more specifically, approximately € 2.8 million) to the Agency in order to fill the gap in the Agency's 2013 budget. However, despite DG ENER's continuous efforts, the transfer has not yet been approved by the Budgetary Authorities.

- For next year

On 26 June 2013 the European Commission adopted the draft 2014 budget of the European Union. In the draft Budget the envisaged contribution to ACER amounts to € 10 188 000. This, together with the assigned revenues of € 692 606, will lead to total funds of € 10 880 606 for the Agency in 2014..

This is over € 4 644 714 lower than the requirement foreseen by the Agency and included in the estimate of expenditure for 2014, adopted by the Administrative Board on 20 March 2013, with a supportive opinion of the Board of Regulators, which amounted to €15 525 320.

The funding level identified by the Agency reflects its ambitious 2014 Work Programme, the key elements of which include the following:

- the completion of the Internal Energy Market, in line with the European Council conclusions in February 2011 and recently reaffirmed;
- the completion of the implementation of REMIT and the launch of the effective monitoring of wholesale energy markets; and
- the handling of the additional tasks assigned to the Agency by the TEN-E Regulation, fulfilling the policy objective set by the European Council for the removal of the energy islands by 2015.

In particular, the ability of the Agency to complete the implementation and to launch the REMIT operation in 2014 rests on the assumption, clearly spelt out in the 2014 Work Programme, that the Agency is put in a position, through the availability of the required financial resources, to substantially complete the deployment of the REMIT-related IT infrastructure in 2013.

In terms of staffing, the Commission's proposal, if approved by the Budgetary Authorities, would allow the Agency to recruit only 5 additional staff (for the implementation of the TEN-E Regulation), against the estimated requirement for additional 49 staff members (of which 35 for the effective operation of REMIT and 14 for the new tasks under the TEN-E Regulation). Despite this limited staff increase, the available funds will equally be insufficient to cover fully the operation of the REMIT-related IT system (estimated recurrent running costs of € 1.5m).

1.3 The results of the NRAs questionnaire

In spring 2013, the Agency circulated to NRAs a fact finding questionnaire concerning the status of REMIT implementation at national level. The questionnaire included questions on e.g. the level of resources foreseen by NRAs for monitoring and investigations under REMIT, the implementation of legal powers for investigations, enforcement and sanctioning, the existence and use of platforms for the disclosure of inside information, the registration of market participants and training needs. The final results of that questionnaire were presented in the BoR meeting in July 2013.

The following main conclusions could be drawn from the questionnaire:

- Ten NRAs indicated that they currently monitor wholesale energy markets to detect and prevent market manipulation and insider trading as defined in REMIT.
- Most of the NRAs monitoring wholesale energy markets, whether only overall trends and tendencies, or monitoring market abuse as foreseen in REMIT, allocate 1-3 full time human resources for the monitoring activities.
- A majority of the NRAs foresee a proactive approach to market monitoring once data collection under REMIT applies, meaning that those NRAs intend to monitor trading activity in wholesale energy products at national level.
- In general, NRAs do not expect any significant increase of human resources dedicated to the enforcement of REMIT.
- Nine NRAs would prefer to use the same dedicated surveillance software that the Agency will be using.
- Twelve NRAs stated that they intend to cooperate on a continuous basis at regional level with other NRAs in monitoring wholesale energy markets.
- Almost all NRAs were of the opinion that the Agency should actively encourage regional collaboration between NRAs on wholesale markets.
- Sixteen NRAs reported that they intend to cooperate on a continuous basis with energy exchanges in monitoring wholesale energy markets.
- In most Member States, the legal implementation of investigatory, enforcement and sanctioning powers seem to be going according to plan although it seems that not all Member States have complied with the June deadline for the transposition.
- Nearly all NRAs reported that they will rely on the registration software developed by the Agency.

- Currently, only a few national and/or regional platforms for the disclosure of inside information exist.
- The NRAs identified the need for training to successfully implement the REMIT requirements. NRAs especially see a need for advanced training on market monitoring and identification of market manipulation and insider trading.

The results of the questionnaire confirm the limited resources available for market monitoring at national level. It is expected that whilst the workload of NRAs resulting from the investigations and enforcement measures will be significant, it is currently underestimated at national level and that monitoring activities at national level will suffer. Many NRAs will thus not be able to perform monitoring at national level (despite their proactive approach towards market monitoring reflected in the results of the questionnaire).

2 Implications

The 2013 Agency Budget, as adopted, does not provide the Agency with the financial resources required for the deployment of the REMIT-related IT system, and in particular the "*Development of IT solutions for market surveillance, data collection, and data sharing between the Agency and NRAs of wholesale energy markets"* planned for this year[1]. If the transfer from DG ENER of the additional financial resources is not authorised by the Budgetary Authorities, or if the funds arrive too late in the year, the Agency will be unable to make any further progress this year and early next year in the implementation of REMIT.

In fact the Agency has very limited opportunities to identify surplus funds in other areas of activity, as these mostly involve staff and not financial resources for investment, which, with an appropriate re-prioritisation, could have been made available for the implementation of REMIT.

Moreover, the emerging delay in the deployment of the REMIT-related IT system is jeopardizing the ability of the Agency to complete the REMIT implementation stage and to be ready to start the operational stage by mid-2014. The delay in the implementation stage has also negative implications for the Agency's 2014 Work Programme. As already indicated, the Work Programme has been prepared on the explicit assumption that the implementation stage would have been substantially completed in 2013. Therefore, the 2014 Work Programme envisages the Agency starting the REMIT operational stage, with the new market monitoring framework, in mid-2014. If this was not the case, some of the activities planned for 2013 will be postponed until next year and the Work Programme would need to reflect this.

For 2014, most of the budget increase relates to the need for the Agency to recruit expert staff to reinforce its market monitoring capability to support the launch of the operational stage of REMIT. However as already indicated, the draft 2014 budget for the European Union, adopted by the European Commission on 26 June 2013, does not envisage the possibility for the Agency to reinforce its market monitoring capabilities.

This said, such reinforcement may eventually not be needed, if delays in the implementation stage were to continue and the start of the operational stage were postponed to 2015 or later

[1] Page 117 of the 2013 Work Programme adopted by the Administrative Board.

(depending of the availability of the fund to complete the deployment of the REMIT-related IT system).

This expected lack of resources in the Agency to operate REMIT coincides with the limited resources available for market monitoring at national level, as emerged from the results of the questionnaire. And in any case, an increasing number of cross-border cases is expected and thus the need for cross-border coordination. Given this cross border dimension, strong cross- border market monitoring is essential for the completion of a fully functioning, interconnected and integrated internal energy market. Therefore, despite the need for continuous cooperation between the Agency and the NRAs, the monitoring tasks of the Agency at EU level (as well as its accountability) cannot be substituted by the monitoring at national level by NRAs themselves.

Moreover, the current staffing of the Agency will make it very difficult to dedicate appropriate human resources to a regional market monitoring approach. A majority of staff will already be charged with ensuring a smooth operation of the data collection system and the coordination of cross-border cases signalled by whistle-blowers or financial regulators.

In this situation, the Agency has serious concerns whether the goal of increased integrity and transparency of wholesale energy markets to foster open and fair competition in wholesale energy markets for the benefit of final energy consumers can be achieved with the current staffing and the envisaged financial resources. It is thus questionable whether confidence in the integrity of electricity and gas markets can be ensured so that the wholesale energy markets prices reflect a fair and competitive interplay between supply and demand and that no profits can be drawn from market abuse. The goal of REMIT may therefore not be achieved.