

To all wholesale energy market participants and other interested parties

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Dear colleague,

Response to Open Letter on REMIT¹

We published an open letter on 15 March 2013² with the aim of helping stakeholders understand what Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) is about and how it affects them. The letter focused on registration, transparency and reporting of inside information. We were also keen to hear about other REMIT-related issues faced by stakeholders.

We want to thank everyone who responded to our letter. Your comments have been very useful as we develop our views on a range of issues relating to the application of REMIT in practice.

This response letter provides some practical information on the registration process and comments on the issue of inside information. Please note that Ofgem cannot provide legal advice. Persons who are, or believe they may be, subject to the requirements of REMIT should seek their own legal advice as appropriate. We also point out that the Agency for the Cooperation of Energy Regulators (ACER) has published guidance on REMIT for national regulatory authorities (NRAs). ACER has published two editions so far³ and is in the process of writing a third edition, in consultation with NRAs. We expect that this will be published later this year.

Summary of responses

We received a total of 22 responses to our open letter. Of those, 19 were not marked as confidential and these are available on the Ofgem website at:

<https://www.ofgem.gov.uk/publications-and-updates/ofgem-open-letter-remit>

Annex 1 to this letter provides a summary of the responses we received to the open letter. In addition to answering the questions in the letter, respondents sought further clarity on the registration process and what constitutes inside information.

¹ Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency

² <https://www.ofgem.gov.uk/ofgem-publications/73653/ofgem-remitopenletter-finalpublished.pdf>

³ All editions of ACER's REMIT guidance is available at
http://www.acer.europa.eu/remi/Pages/ACER_guidance.aspx

Registration

Who needs to register

We would like to clarify that, in accordance with Article 9 of REMIT, only those market participants that enter into transactions that must be reported to ACER in accordance with Article 8(1) of REMIT (Reportable Transactions) are required to register with a national regulatory authority.⁴ For the avoidance of doubt, a market participant that does not enter into Reportable Transactions is not required to be registered, although it will need to comply with the other relevant provisions of REMIT (such as Article 4). Implementing Acts to be adopted by the European Commission will specify the transactions in wholesale energy products which are Reportable Transactions.

Each market participant that enters into Reportable Transactions will need to register individually. There may be more than one legal entity within corporate groups that enter into Reportable Transactions: each individual entity will need to register under Article 9.

Some respondents questioned the need for final customers to register. However, REMIT requires that final customers with a consumption capacity that meets the threshold set out in Article 2(5)⁵ that enter into Reportable Transactions are required to register. We recognise that there are some questions about the definition of a final customer. This is a topic that we expect ACER to cover in the forthcoming third edition of its guidance.

What information will be required

Some respondents asked about what registration information market participants would be required to provide. ACER published the definitive list of fields to be completed by market participants in ACER Decision No 01/2012⁶. At this stage, Ofgem does not envisage that it would require market participants registering in Great Britain (GB) to provide additional registration information to that which is outlined in ACER Decision No 01/2012.

We also do not believe it is appropriate, and therefore do not intend to, 'pre-populate' the GB register of market participants with any existing information. We note that it is for persons to determine (including on the basis of appropriate legal advice) whether they are a market participant that needs to be registered. Once the decision to register has been taken, it is the responsibility of that market participant to ensure the accuracy of the registration information provided.

How to register

Ofgem has at the current time decided to make use of ACER's online registration system for market participants to register in GB. This system is at an advanced stage of development. This decision has a number of benefits:

- the use of a single system will provide market participants across Europe with more consistency in the approach and format of the registration process;
- there are economies of scale for multiple NRAs to use the same system rather than develop separate systems; and
- the online system will enable market participants to both complete the initial registration and to communicate any change to information provided in the registration form, as per the requirements of Article 9(5).

⁴ Article 9(1) also specifies with which NRA a market participant is required to register.

⁵ Article 2(5) states that "consumption of a final customer at individual plants under the control of a single economic entity that have a consumption capacity of less than 600GWh per year shall not be taken into account in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets".

⁶

http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf

ACER intends to provide a registration user manual to help market participants registering with NRAs that use the ACER registration system. The manual will provide step-by-step instructions on how to complete the registration process as well as examples of the information to be provided for each field. It is our current understanding that the ACER registration user manual will be published ahead of the registration system being opened. The third edition of the ACER guidance is also expected to contain a new chapter on the registration process. Although at this stage we do not anticipate it will be necessary, we may prepare additional Ofgem guidance on registration to complement these ACER publications.

When to register

The reporting to ACER of Reportable Transactions will begin six months after the adoption of the Implementing Acts (IAs). With effect from that date, ie the date which is six months after the adoption of the Implementing Acts, market participants will need to submit the registration form prior to entering into Reportable Transactions. Our latest understanding is that adoption of the IAs will happen no earlier than the end of 2013.

NRAs are required by REMIT to establish a registration system for market participants within three months of the adoption of the Implementing Acts. We will endeavour to open the registration system for GB as soon as possible after the Implementing Acts are adopted. We want to give market participants as much time as possible to register before the requirement to submit the registration form prior to entering into Reportable Transactions becomes effective. We will update market participants as soon as it is clear when the registration system will be ready.

We would like market participants to note that we do not intend to put in place any kind of transitional process for, or provide any comfort to, market participants that are not registered when this requirement becomes effective.

What information from the register will be published?

Some respondents to our open letter said that the publication of personal or commercially sensitive information should not be necessary. We highlight that Article 9(3) of REMIT⁷ prohibits the publicly-available European register from disclosing commercially sensitive information on individual market participants. Additionally, it is clear from ACER's consultation paper on the REMIT registration format⁸ that its intention is not to publish personal information:

"The Agency [(ACER)] intends to publish at least all information fields of the "basic information" section of the registration format.

The Agency believes that it is not necessary to publish:

- *the information regarding the physical persons included in the "Contact persons" section of the registration format;*
- *the information regarding corporate relationships with parent and related undertakings included in the "Corporate structure information" section of the registration format;*
- *the information on the "ultimate controller of beneficiary of the market participant's trading activities".*

Although raised by only a small number of respondents, we would highlight the potential usefulness of publishing Field 120: Publication Inside Information. This would provide a

⁷ Article 9(3) states that the Agency "may decide to make the European register, or extracts thereof, publicly available provided that commercially sensitive information on individual market participants is not disclosed".

⁸ http://www.acer.europa.eu/Official_documents/Public_consultations/PC_%202012_R_08_on_REMIT_Registration_Format/Document%20Library/1/ACER%20publ%20consult%20paper%20Registration%20format%20120418%20final%20with%20email%20address.pdf

complete, up-to-date list of website addresses of where market participants publish inside information.

More generally, the inclusion of information provided by market participants on a publicly-available European register in no way implies accuracy of the information or a signal that ACER or any NRA has verified the accuracy of the information provided. The requirement to ensure accuracy lies with market participants.

Although not directly relevant to registration, a number of market participants raised concerns about the handling of transactional information and other commercially sensitive information. With regards to transactional information, ACER intends to publish a transaction reporting user manual to provide market participants with guidance on how to provide the relevant transaction data to ACER. Both Ofgem and ACER recognise the sensitive nature of this data and are designing IT systems to handle the data securely.

Transparency

Respondents' answers to our questions in the Transparency section of the open letter were very helpful (see the summary of these in Annex 1). We have used these to:

- highlight to ACER the areas where market participants are seeking further clarity, including:
 - the question of liability when using platforms,
 - what constitutes inside information, and
 - the difference between transparency and inside information; and to
- feed into discussions with ACER and other NRAs, including views on:
 - platforms, and
 - guideline threshold levels for the reporting of inside information.

Publishing inside information

We note that in terms of GB platforms for inside information notifications, National Grid Gas has a central platform, the GB REMIT Insider Trading Notifications webpage (<https://www.remit.gb.net/>), which can be used for disclosure of inside information. In electricity, Ofgem has approved⁹ a modification request to amend the BSC Code to facilitate the development of an electricity platform where market participants can post inside information according to REMIT. This platform will be in the form of a webpage on the Balancing Mechanism Reporting System (BMRS) website, and is expected to be operational by the end of 2014.

Inside information must be publicly disclosed in an effective and timely manner (Article 4). We refer market participants – both users of platforms and those who disclose on company websites – to ACER's guidance on what constitutes effective disclosure. In particular, we recommend that those disclosing inside information consider carefully the content and format of the notifications currently being posted against those guidelines.

What information should be published?

Article 4(1) requires market participants to publicly disclose in an effective and timely manner 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.

⁹ We published our approval letter on 16 August 2013. See <https://www.ofgem.gov.uk/publications-and-updates/balancing-and-settlement-code-bsc-p291-remit-inside-information-reporting-platform-gb-electricity>

Market participants are responsible for deciding if information they possess constitutes inside information. To assist with this, those disclosing information will want to consider if the information fulfils the criteria set out in Article 2(1)(a). These include that:

- the information is of a precise nature;
- the information has not been made public;
- the information relates directly or indirectly to one or more wholesale energy products; and
- if the information were made public, it would be likely to significantly affect the prices of those wholesale products.

Commercially sensitive information

Concerns were raised in relation to the publication of information that could be commercially sensitive. Market participants need to determine, in the first instance, whether or not that information is inside information which is required to be published in accordance with Article 4 of REMIT. If the information is determined to be inside information which would otherwise be required to be published, market participants may consider whether the conditions to exceptionally delay publishing the information in accordance with REMIT Article 4(2) are met in the circumstances. We would take this opportunity to remind market participants that irrespective of the reason for a delay in publishing inside information, the prohibition of insider trading under Article 3 applies until the information is publicly disclosed. Any market participant delaying publication is required to notify ACER and Ofgem without delay of the delayed disclosure. Further guidance relating to the application of Article 4 may be found in the latest edition of ACER's published guidance.

ACER's REMIT website (see link below¹⁰) contains a web-based form that can be used to send notifications of delayed publication of inside information. Information submitted on this form will be automatically sent to Ofgem.

Next steps

We will be setting up regular updates on the REMIT page of our website in due course and will also host wider stakeholder meetings, when appropriate. In the meantime, we are continuing to engage with stakeholders, including through attending representative forums, and are happy to be contacted if you feel our attendance would be helpful.

We are also considering setting up an email group for REMIT-related updates. If you would like to be included in this email group, please email REMIT@ofgem.gov.uk. Please make sure that the relevant contact name, company and contact details are clearly indicated.

We also draw your attention to our consultations on our proposed approach for setting the penalties for breaches of REMIT and on the procedures we expect to adopt for investigations and enforcing REMIT. These consultations close on 29 August 2013. They are in connection to the specific new powers we received on 29 June 2013¹¹ to investigate and enforce, among other things, the prohibitions on abuse in wholesale gas and electricity markets that are set out in REMIT.

If you have any comments or questions on the content of this letter, would like to sign up to receive REMIT related notifications, or would like to meet with us, please contact Louise van Rensburg, Head of REMIT Implementation, at REMIT@ofgem.gov.uk.

¹⁰ ACER web link to report delayed publication of inside information can be found at:

<http://www.acer.europa.eu/remit/Pages/Important-information-for-market-participants.aspx>

¹¹ Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013, SI 2013/1389

Yours sincerely,

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Annex 1: Summary of responses to Open Letter on REMIT

Question 1: Are there specific issues you would like the user manual to cover or other questions you have about registration?

A large number of respondents raised issues about the registration process. There were general requests that:

- the registration process be made as simple as possible to avoid an excessive administrative burden on market participants;
- there is clear guidance on what information will be required during the registration process and on how the registration process is to be completed by market participants; and that
- guidance covering these issues be provided as early as practicable.

Respondents asked a series of questions around the issue of which entities would have to register as market participants and where they would be required to register. One respondent queried whether or not there would be a *de minimis* threshold of any type, with market participants under this threshold not having to register.

There were also requests for more information on the timescales around registration. This was in terms of both when registration is likely to begin and when a market participant is deemed to have completed the registration process. The issue of how registration information was to be kept up to date by market participants was also raised.

Question 2: ACER may make extracts of the participant register publicly available, provided that commercially sensitive information is not disclosed. What registration data on market participants would you value being made public by ACER? What data would you be concerned about being made public in this way?

There was general consensus that respondents did not wish to see commercially sensitive information or personal information being published. The majority of respondents were comfortable with data such as the name of the market participant, their registered address and company website being made public.

There was a mix of views as to whether information beyond these basic details should be published. Some market participants felt that other information, eg type of market participant, would be useful while others reported that they already know their main counterparties and therefore would not find additional information useful.

Question 3: What do you see as the advantages and disadvantages of moving towards the use of transparency platforms, either at EU level, regional or national level?

In answering what they thought were the advantages and disadvantages of platforms, generally respondents seemed to be positive towards the concept of platforms. Only one respondent stated their preference to publish on their own website alone, although preferences were not explicitly asked for. The benefits of platforms that were cited included that they provide a central location for publication of inside information, and (hence) improve transparency; and that they allow for more consistent disclosure of information. Having consistency was repeatedly highlighted as very important.

There were two main drawbacks to platforms noted by respondents. These were:

1. the time required for their implementation; and
2. the issue of liability with regard to publishing on platforms. This is because if a platform fails, market participants (1) remain liable for the publication of any inside information and (2) are prohibited from trading using that information until it is published. There were comments that this undermined some of the benefits to them

of platforms, as it implied the need to have an alternative means of publishing inside information in case of platform failure. Clarification was sought on this issue.

In regard to our question about which of the three levels of platform they would prefer – national, regional or EU – the majority of respondents expressed a preference for a national platform. They felt that a GB- or UK-specific platform would make relevant information more accessible by only showing the information relevant to market participants operating in that market. Some respondents also referred to the challenges encountered by other organisations in providing an EU-wide platform. It was suggested that this was, in part, because of the differing requirements of stakeholders across the EU.

A couple of respondents said that EU-level platforms would be preferable because of the international scope of their business. They therefore felt that platforms with a smaller geographical scope would be less helpful.

A few respondents suggested that a move towards an EU-wide platform may be something that could be aimed for further into the future. One suggested that an EU-wide platform that scraped information from national platforms across the EU could be provided.

Question 4: Are there significant differences between the needs of electricity and gas market participants for a transparency platform? If so, what are these?

Almost all respondents considered that the only difference would be the granularity of data – that the required granularity of data would be greater for electricity than for gas.

Question 5: What are the characteristics of an effective transparency platform? Do you see any issues in using transparency platforms to meet your REMIT obligations?

Many of the responses as to what the characteristics of an effective platform are overlapped. It was generally considered that an effective platform should:

- be public;
- be free of charge;
- be easily accessible;
- be simple to use;
- provide standard(ised), consistent data;
- provide historical data; and
- allow for data to be filtered.

Question 6: Who are the main users in your organisation of inside information disclosed by other market participants? What information do you need published on such platforms by all participants?

The main users of disclosed inside information, according to respondents, are traders, analysts, operational teams and control teams. Respondents wrote that the information they need to be published on platforms by all market participants are:

- information required under REMIT;
- information required under EU regulations;
- wholesale agreements; and
- transport bookings.

Further clarification on the definition of 'inside information' as well as its distinction from transparency information was sought.

Question 7: What is an appropriate GB gas market threshold for inside information disclosure and why?

There was a lot of variation in the responses to the question on what an appropriate GB gas market threshold for inside information disclosure could be. This was not only with regard to the threshold level, but also as to whether a threshold should be set at all.

Of those who recommended/suggested a threshold, some felt that it should be an absolute figure above which all related information should be published. However, a significant number of respondents said that any threshold should only be a guide as to the volume above which related information could be considered to be inside information. It was noted that it is up to the market participant to decide whether a particular piece of information constitutes inside information, as its impact on wholesale energy prices depends upon the prevailing market conditions.

One respondent noted that, in its (second edition) guidance, ACER notes as an example that outages of more than 100MW may constitute inside information. The respondent commented that this example threshold is much smaller than the 10mcm/day threshold that has been discussed in the GB gas industry. In terms of the threshold level itself, 7 respondents suggested a threshold of 10mcm/day; 5 suggested figures between 1 and 10mcm/day; and one simply noted that the threshold set should be low.

A number of respondents noted that a single threshold for the EU would not be appropriate due to the differences between the different markets in the EU. Another respondent noted, however, that a single threshold should be given, due to the interconnectivity of the networks.