

To wholesale energy market participants in Great Britain, Northern Ireland and the European Union, and to any other interested parties

Date: 01 March 2019

Dear Colleague,

### **No-deal EU exit REMIT contingency arrangements – Update**

The United Kingdom is scheduled to leave the European Union on 29 March 2019. As part of our contingency planning, on 4 December 2018 we published a letter titled 'No-deal EU exit REMIT<sup>1</sup> contingency arrangements'<sup>2</sup> ("the December letter"). The letter set out Ofgem's contingency plans for how the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) will apply in Great Britain in the event of no deal being agreed.

Leaving the EU with a deal remains the Government's priority. However, until this is confirmed, a responsible government and responsible regulator must plan for every eventuality, including a no deal scenario. Consequently, we consider it is timely to provide market participants (MPs) with an update on how the no-deal REMIT contingency arrangements will work.

For the avoidance of doubt, this notice outlines no-deal contingency arrangements only. If a Withdrawal Agreement is implemented, the EU exit implementation period will run until 31 December 2020, unless otherwise agreed by the UK Government and the EU. During this time our working assumption is that current REMIT registration and data reporting channels will remain unchanged.

As in the December letter, this communication notice covers three main areas: (i) monitoring and enforcement; (ii) registration; and (iii) data reporting. The key messages we wish to convey in this update are as follows:

- The messages on monitoring and enforcement, registration and data reporting outlined in the December letter still stand. The REMIT prohibitions and obligations will still apply in GB post-Brexit and Ofgem will continue to have the powers to monitor and enforce them.
- MPs will not need to re-register with Ofgem in order to enter into transactions for wholesale energy products deliverable in GB after EU exit. Following a Direction from Ofgem, we will recognise the registration of MPs currently registered with

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<sup>1</sup> REMIT is the EU Regulation on Wholesale Energy Market Integrity and Transparency. REMIT obliges EU Market Participants (MPs) to publicly disclose inside information and prohibits insider trading and market manipulation. To allow National Regulatory Authorities (NRAs) to carry out effective market monitoring, REMIT imposes a registration obligation on MPs, and obliges MPs to report (via Registered Reporting Mechanisms – RRM) certain trade and fundamental data to the Agency for Cooperation of Energy Regulators (ACER).

<sup>2</sup> [https://www.ofgem.gov.uk/system/files/docs/2018/12/no-deal\\_eu\\_exit\\_remit\\_contingency\\_arrangements.pdf](https://www.ofgem.gov.uk/system/files/docs/2018/12/no-deal_eu_exit_remit_contingency_arrangements.pdf)

the Utility Regulator for Northern Ireland (UREGNI) or with a National Regulatory Authority (NRA) of an EU Member State as being valid for compliance with Article 9 REMIT in GB.

- MPs currently registered with Ofgem who wish to enter into transactions or place orders to trade in wholesale energy products where delivery is in the EU, will be required to re-register with a NRA of an EU Member State. Consistent with the EU Agency for Cooperation of Energy Regulators' (ACER) Open Letter<sup>3</sup> published on 8 January 2019, affected MPs are advised to initiate this process now, if they have not already done so.
- MPs currently registered with Ofgem will continue to be registered with Ofgem, unless they elect to re-register with a NRA of an EU Member State in order to be able to eligible to enter into transactions for wholesale energy products deliverable in the EU. Following re-registration, MPs can use their new registration code for the purposes of compliance with Article 9 REMIT, both in GB and in the EU. For the avoidance of doubt, MPs will not be obliged to use two codes.
- GB MPs re-registering with an EU NRA, in order to be eligible to enter into transactions for wholesale energy products deliverable in the EU, will be required to report trade and order data in relation to those transactions to ACER using their new registration code. We understand that ACER, as expressed in its Open Letter, is engaging on a continuous basis with Registered Reporting Mechanisms (RRMs) to ensure a smooth ongoing REMIT reporting following EU exit. The re-registration process should not present a REMIT compliance risk to MPs.
- Trade and fundamental data relating to GB wholesale energy markets and products, will no longer be collected by ACER. Following a review period, if appropriate, the trade data will be collected by Ofgem. During the review period, Ofgem will continue to monitor the market for possible breaches of market integrity using existing data sources. In respect of GB fundamental data, this will continue to be made publicly available by the parties obligated under the Transparency Regulation SI and Gas Regulation SI.

## I. Monitoring and enforcement

As set out in the December letter, Ofgem will continue to monitor and enforce wholesale energy market integrity and transparency as it does currently in Great Britain (GB). The obligation on MPs to publicly disclose inside information in an effective and timely manner, and the prohibitions on insider trading and market manipulation, will remain. Ofgem will continue to monitor, investigate and enforce breaches of integrity and transparency using its powers under Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulations 2013.

Having consulted with the Financial Conduct Authority (FCA) and HM Treasury, Ofgem understands that the REMIT carve-out for wholesale energy products within MiFID II will continue domestically. This means that GB MPs will not face different domestic regulatory requirements when trading before and after EU exit.

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<sup>3</sup> [https://documents.acer-remit.eu/wp-content/uploads/Open-Letter\\_Communication-on-REMIT-and-Brexit\\_190108.pdf](https://documents.acer-remit.eu/wp-content/uploads/Open-Letter_Communication-on-REMIT-and-Brexit_190108.pdf)

## II. Registration

For the sake of clarity, we have distinguished between GB registration and the case where a GB market participant requires to re-register with an EU NRA.

### GB Registration

Following a direction published by Ofgem after EU exit, Ofgem will, until further notice, unilaterally recognise<sup>4</sup> the existing registration of all currently registered MPs as valid for the purposes of compliance with Article 9 of REMIT in GB. MPs currently registered with Ofgem, UREGNI or another EU NRA will not need to take any re-registration action.

In respect of MPs currently registered with Ofgem through the Central European Register of Energy Market Participants (CEREMP), we will ensure the migration of the relevant REMIT registration data from ACER's CEREMP to our own database. In anticipation of such migration and in line with Article 9(5) REMIT, we invite GB MPs to ensure that the information in CEREMP is up to date.

After EU exit, new MPs who wish to register with Ofgem for the first time, and existing Ofgem registered MPs, who wish to edit or amend their registrations, should contact us directly. Instructions on how to do this will be available on our REMIT registration webpage<sup>5</sup>. In the period immediately following EU exit we will deploy a simple solution whereby registration information will be sent to Ofgem via e-mail. We expect to require a slightly reduced amount of data compared to the registration data required by ACER<sup>6</sup>.

MPs already registered with an EU Member State who wish to edit or amend their registrations should continue to do so as they do now. Ofgem will have access to the relevant parts of this data from the registration data made publicly available by ACER.

This approach is designed to minimise disruption to MPs by ensuring that the registration obligations set out in Article 9 of REMIT can be met in the least burdensome way.

### Re-registering with an EU NRA

As explained in the December letter, MPs presently registered with Ofgem who wish to enter into transactions or place orders to trade in wholesale energy products where delivery is in the EU will be required to re-register with a NRA of an EU Member State, in a manner consistent with ACER's guidance.

On 9 January 2019, ACER provided an update on the way re-registration would work in its 'Open Letter on the Withdrawal of the United Kingdom from the European Union and implications on the registration of market participants and data collection under REMIT'<sup>7</sup>.

In its letter ACER notes that affected MPs may *already* prepare their registration with the NRA of a EU-27 Member State, and that until the withdrawal of the UK from the European Union, they will continue to be registered solely in the UK. ACER further

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<sup>4</sup> The no-deal REMIT SI requires that all MPs, entering into transactions, or placing orders to trade, in wholesale energy products where delivery is in GB, will be required to register with Ofgem within four weeks of exit. However, to avoid unnecessary administrative burden, Ofgem intends to issue a direction stating that, until further notice, this requirement will not apply to those MPs who are already registered with the Utility Regulator for Northern Ireland (UREGNI) or with a National Regulatory Authority (NRA) of an EU Member State.

<sup>5</sup> <https://www.ofgem.gov.uk/gas/wholesale-market/european-market/remit/registering-market-participant-under-remit>

<sup>6</sup> [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf)

<sup>7</sup> [https://documents.acer-remit.eu/wp-content/uploads/Open-Letter\\_Communication-on-REMIT-and-Brexit\\_190108.pdf](https://documents.acer-remit.eu/wp-content/uploads/Open-Letter_Communication-on-REMIT-and-Brexit_190108.pdf)

explains that when *'re-registering with the NRA of an EU27 Member State which uses CEREMP<sup>8</sup> for national registration purposes, market participants should use the "Change Member State" functionality in the CEREMP registration system. This functionality will pre-populate the registration form for the re-registration with the new NRA of choice with the information previously provided for registration in the UK'*. Accordingly, ACER invites market participants to make themselves familiar with the specificities of the registration process with the NRA they aim at re-registering with in due time in early-2019.

Ofgem recommends that affected MPs follow ACER's advice and begin the re-registration process in a timely manner, rather than wait on confirmation that no agreement on the UK's withdrawal from the EU has been reached. We understand from ACER that the re-registration process first requires Ofgem to approve, on request from CEREMP, the termination of the existing registration, before the new registration request can begin. We have not yet begun to approve termination requests; we will keep this under review pending developments in relation to the Withdrawal Agreement.

GB MPs re-registering with an EU NRA, in order to be eligible to enter into transactions for wholesale energy products deliverable in the EU, will be required to report trade and order data in relation to those transactions to ACER using their new registration code. We understand that ACER, as expressed in its Open Letter, is engaging on a continuous basis with RRM to ensure a smooth ongoing REMIT reporting and will address any REMIT reporting issues related to EU exit through the existing RRM communication channels. We do not anticipate that the re-registration process will present a REMIT compliance risk to MPs.

As indicated in the section above, Ofgem will recognise the registration of all MPs registered with EU-27 NRAs as valid in GB for the purposes of compliance with Article 9 of REMIT. This applies equally to GB MPs re-registering with EU-27 NRAs. Indeed, we note that for the purposes of entering into transactions after EU exit, to avoid carrying two codes, re-registering MPs can use only their new registration code, regardless of whether the product is for delivery in the EU or GB. In the event that re-registration proves to be unnecessary, MPs would have the option to re-register with Ofgem, should they wish to, or should subsequent GB registration requirements change.

### III. Data Reporting

As set out in the December letter, trade and fundamental data relating to GB wholesale energy markets and products will no longer be collected by ACER. This data will indeed no longer relate to wholesale energy products for delivery in the EU. We assume this will be effective from midnight CET on 29 March 2019. After EU exit, there will be an initial review period during which MPs who currently provide data to ACER will not need to send that data to Ofgem. We will consult with industry stakeholders as part of the review and, if appropriate, will announce the start of GB REMIT data reporting. We would in that case provide at least a three months' notice to MPs.

During the review period, Ofgem will continue to monitor the market for possible breaches of market integrity. We will be using existing data sources such as trade and order data currently collected from GB brokers and exchanges under Regulation 9 of the Electricity and Gas (Market Integrity and Transparency) (Enforcement etc.) Regulation 2013 as well as publicly available transparency data, and subscription data. This will capture the vast majority of trading activity in the market, therefore Ofgem does not consider this will have an adverse effect on its monitoring capability and will maintain the status quo in terms of appropriately enforcing market integrity and transparency. We

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<sup>8</sup> E-Control in Austria, ARERA in Italy, ANRE in Romania and Agencija za energijo in Slovenia are the only EU-27 NRAs who do not use CEREMP. MPs who wish to re-register with these NRAs should contact them directly.

do not intend to introduce additional data retention obligations to cover the review period.

In respect of GB fundamental data, this will continue to be made publicly available by the parties obligated under the Transparency Regulation SI and Gas Regulation SI. In particular, we note the requirements of the Transparency Regulation that providers of this data should ensure i) the published data is available to the public free of charge through the internet and in English; ii) the data is up to date, easily accessible, downloadable and available for at least five years, and iii) the data updates are time stamped, archived and made available to the public. Obligated parties discharging transparency obligations through data service providers must ensure that these requirements continue to be met.

#### Next Steps

Should the United Kingdom leave the European Union on 29 March 2019 without the implementation of a Withdrawal Agreement, the contingency arrangements outlined in this letter will be implemented in full on that date. If a Withdrawal Agreement is implemented, the EU exit implementation period will run until 31 December 2020, unless otherwise agreed by the UK Government and the EU. During this time our working assumption is that current REMIT registration and data reporting channels will remain unchanged.

We currently have no further communications planned in advance of 29 March 2019, but should circumstances change, we will act to provide the maximum clarity possible, where appropriate. In the meantime, we will continue to prepare the necessary contingency measures in order to protect GB consumers and to ensure that GB wholesale energy markets continue to function under all scenarios.

We are inviting stakeholders to engage with us on our or their contingency plans and to raise with us any concern that they may have. Please feel free to contact us through the following e-mail address : [REMIT.Registration@ofgem.gov.uk](mailto:REMIT.Registration@ofgem.gov.uk).

Yours sincerely,

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