

Confidential – Draft  
client Memo on  
REMIT II Changes  
Client: ENERGY  
TRADER

## Briefing Note REMIT II

17.04.2024

# Table of Contents

1. Introduction REMIT II.....	2
2. Major Changes Introduced by REMIT II .....	3
2.1. Summary.....	3
2.2. Registration of Market Participants from 3 <sup>rd</sup> Countries.....	3
2.3. Changed reporting requirements.....	4
2.4. Algorithmic trading requirements.....	6
2.5. Extended monitoring requirements.....	6
2.6. Increased powers for ACER and other rules around sanctioning .....	7
Annex (TEXT AS PUBLISHED): .....	8

# 1. Introduction REMIT II

Following the endorsement of REMIT II regulation in the European Parliament and Council, REMIT II is now awaiting publication in the Official Journal of the EU. This REMIT II Report (hereafter “Report”) has been requested by ENERGY TRADER to get a basic understanding of the key changes envisaged by REMIT <sup>1</sup>. At the time of this Report, the final REMIT II text is published in the Official Journal (16.04.24). The rationale of this GAP Report is to summarise the legislative novelties from the perspective of an LNG supplier without permanent establishment in the EU27.

REMIT I (hereafter “REMIT”) was published in the Official Journal of the European Union on 8 December 2011 and entered into force on 28 December 2011.

REMIT introduced, for the first time, a consistent EU-wide framework:

- Defining inside information, prohibiting its use in trading activity, and requiring its public disclosure on Inside Information Platforms,
- defining market abuse, in the form of market manipulation and attempted market manipulation in wholesale energy markets,
- the explicit prohibition of market manipulation, attempted market manipulation and insider trading in wholesale energy markets,
- requiring market participants to register in a central database and to report transactions in Wholesale Energy Products, including LNG,
- the enforcement of the above prohibitions and the sanctioning of breaches of market abuse rules at national level. REMIT prohibits market manipulation and trading on inside information in wholesale energy markets.

The definitions of market manipulation and insider trading in REMIT are in line with those applying under Directive 2003/6/EC (Market Abuse Directive or MAD - the predecessor of MAR and CS MAD2), though adapted for wholesale energy markets.

Through REMIT Q&As, ACER has filled out the REMIT text giving guidance on practical interpretation of text and practices, in total 30 versions<sup>2</sup> have been produced to the Q&A since the entry into force of REMIT.

As REMIT investigations and sanctions became more frequent, the European Commission and Council decided in 2021 to embark on a revision of REMIT, this process has been packaged up with a new energy market design. Based on a consultation, the European Commission released legislative proposals relating to an updated version of REMIT level 1 jointly with changes to the EU energy market design. The gas supply crisis had triggered suspicions of European Governments about the correctness of the TTF benchmark. In order to have a neutral price reference, the EU tasked ACER with the establishment of an “independent LNG” benchmark” which was introduced via the “Gas Council Regulation” (GCR). To support this benchmark, those engagement in LNG activity bound for the Union must report data to ACER on the day it arises via the “Terminal” system. This benchmark and the associated reporting requirements have now been merged into REMIT II .

REMIT II is part of a wider reform of the EU’s electricity market design. The reform aims to make electricity prices less dependent on volatile fossil fuel prices, shield consumers from price spikes and

---

<sup>1</sup> [https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401106](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401106)

<sup>2</sup>

[https://www.acer.europa.eu/sites/default/files/REMIT/Guidance%20on%20REMIT%20Application/Q%26As%20on%20REMIT/REMIT\\_QAs.pdf](https://www.acer.europa.eu/sites/default/files/REMIT/Guidance%20on%20REMIT%20Application/Q%26As%20on%20REMIT/REMIT_QAs.pdf)

accelerate the deployment of renewable energies and improve consumer protection. REMIT II was endorsed by the European Parliament on 29th February 2024.<sup>3</sup> Its publication in the Official Journal is now expected for April 2024.

## 2. Major Changes Introduced by REMIT II

### 2.1. Summary

**REMIT II includes the following key changes:**

- Several changed definitions including that for market manipulation and inside information;
- Changed definition of Wholesale Energy Products: Single Day-Ahead and Intraday Coupling (SDAC and SIDC) data for electricity;
- Changed definition and obligations for OMPs;
- Market participants resident or established in a third country must appoint a “legal representative” in the EU;
- Changed reporting requirement including reporting of storage contracts for natural gas and electricity;
- Notification of use of the algorithmic trading together with control requirements around them;
- An extended obligation for those in the market to self-monitor and report suspicious activity via a new definition of “PPAET” and further requirements.;
- Notification of use of the direct electronic access;
- Increased powers for ACER and other rules around sanctioning.

The following sections elaborate on some of the above where relevant.

### 2.2. Registration of Market Participants from 3<sup>rd</sup> Countries

Market participants from third countries (resident market participants outside the EU27) must designate a legal **representative in a Member State** in which the market participants are most active in the wholesale energy market. The legal representative (REMITREP) must be designated by a written mandate and authorized to act on behalf of the market participant. The description of the role of REMITREP looks similar to a delivery agent for official communications from the chosen NRA, ACER.

REMITREP must have a contract with the non-resident market participant to have (in theory) access to the transaction and other relevant data that relates to any Requests for Information that may arise from the National Regulatory Authority. Market participants are obliged to ensure that their representative has the necessary powers and means to ensure the market participants' efficient and timely compliance with the decisions and cooperation with the requests for information of the national regulatory authorities or the European Union Agency for the Cooperation of Energy Regulators (ACER). We expect further guidance from ACER in this regard.

---

<sup>3</sup> [https://www.europarl.europa.eu/doceo/document/TA-9-2024-0116\\_EN.html](https://www.europarl.europa.eu/doceo/document/TA-9-2024-0116_EN.html)

### **Lesson for ENERGY TRADER:**

As ENERGY TRADER does not have any physical presence in the EU, it must appoint a legal representative (“REMITREP”) in the EU27. Should ENERGY TRADER NL in the meantime be staffed, ENERGY TRADER NL could be used.

### **Info for ENERGY TRADER:**

CorreggioNET will offer REMITREP services to its non-EU resident clients in the key countries which will be qualified as a representative and carry out the required activity in the event of an enquiry. ENERGY TRADER has six months as of the date of entry into force of REMIT II to appoint a legal representative. Should ENERGY TRADER be interested to receive information, on this please contact: [j.ziembra@correggio-consulting.eu](mailto:j.ziembra@correggio-consulting.eu).

## **2.3. Changed reporting requirements**

### **New types of report**

The scope of data collection under REMIT II is enlarged. The scope of reporting now includes:

- ✓ Storage contracts
- ✓ Coupled markets,
- ✓ Balancing markets and balancing contracts,

Allocated transmission capacities and products that have potential delivery in the Union.

Therefore, REMIT II obliges:

- The reporting of storage-contracts for gas and electricity will be expanded so that actual contracts are reportable ) wholesale energy products (rather than “fundamental” physical data as now).
- Details for the reporting of storage contracts and related derivatives are currently not included. Further secondary regulation (REMIT Implementing Regulation) will provide more details.

### **Lesson for ENERGY TRADER:**

ENERGY TRADER will need to report such transactions if they are entered into. More details can be provided once they are available.

### **Reporting of orders – access to order books**

As of the entry into force of the revised REMIT, OMPs shall report to the Agency the data relating to the order book(s) for the market participants trading on the OMP, thereby fulfilling the market participants reporting obligations.

Further details on order book reporting are to be introduced through implementing regulation. ACER expects order book reporting to commence as of entry into force of the revised REMIT and to be done on the basis of current reporting standards detailed in the current REMIT Implementing Regulation.

From the entry into force of the revised REMIT, ACER can request OMPs to provide access to the order books. This would, for example, entail access to systems, applications and tools offered by OMPs to market participants enabling them to enter into transactions, including placing orders to trade. OMP needs to give ad-hoc access to details on orders and trades stored in the OMPs systems during a specified time period, for market monitoring, data quality assurance or investigation purposes.

## **Inclusion of the LNG Benchmark and associated reporting into REMIT II**

During the price volatility triggered by the supply crisis, the EU Commission raised doubts about the accuracy of prices at TTF. In consequence an EU LNG Benchmark was introduced in January 2023<sup>4</sup>.

To obtain an “accurate, objective and reliable assessment of the price for liquefied natural gas deliveries to the Union”, ACER collects LNG market data that are necessary to establish a daily LNG price assessment and an LNG benchmark. The LNG price assessment and the LNG benchmark are established on the basis of all transactions pertaining to LNG deliveries to the Union. This is currently known as the “Gas Council Regulation” and requires LNG data to be reported to ACER on the same day as the activity via the “Terminal” system.

Based on this data, ACER has been producing and publishing a daily LNG price assessment starting since 13 January 2023. Whereas the Agency is already empowered to collect the relevant market data from all participants active in LNG deliveries to the Union, this empowerment has “migrated” into REMIT II.

Market Participants must report the LNG market data to the ACER as close to real time as technologically possible, either after the conclusion of a transaction or after the posting of a bid or offer to enter a transaction. The Agency’s LNG price assessment should comprise the most complete dataset including transaction prices.

### **Lesson for ENERGY TRADER:**

We believe that for ENERGY TRADER, the migration of legal base for the REMIT benchmarking process has no relevance as the situation remains unchanged but the current requirement should be noted and complied with.

---

<sup>4</sup> Council Regulation (EU) 2022/2576 “Enhancing solidarity through better coordination of gas purchases, reliable price benchmarks and exchanges of gas across borders”

## 2.4. Algorithmic trading requirements

The use of trading technology has evolved significantly in the past decade and technology is increasingly used on the wholesale energy markets.

The increased use of algorithmic trading and high-frequency algorithmic techniques with minimal or no human intervention is affected by new reporting obligations on the use of algorithms. Market participants that engage in algorithmic trading shall notify both the NRA in the Member State where they are registered as well as the Agency.

ACER will require that market participants to provide this notification through the CEREMP. In addition, REMIT II requires that controls be deployed in order to ensure that algorithms do not cause market disruption (these types of control are already found in both MIFID II and at the exchange level).

Market participants will need to provide the notification as of entry into force of the revised REMIT and implement the new controls.

REMIT provides for Market Participants the need to engage in algorithmic trading have in place effective systems and risk controls suitable to the business it operates to ensure that its trading systems are resilient and have sufficient capacity, are subject to appropriate trading thresholds and limits and prevent the sending of erroneous orders to trade or the systems otherwise functioning in a way that may create or contribute to a disorderly market.

### **Lesson for ENERGY TRADER:**

This change is of general interest and is meant to register (and control) market participants using algos, notably in the spot market. Should ENERGY TRADER use algos for trading, a specific registration requirement is triggered. Details of the controls are not yet known. For now, should ENERGY TRADER use algorithms, it is recommended that a framework be put in place based on MIFID II. Further details can be provided if required.

## 2.5. Extended monitoring requirements

While REMIT currently requires “PPAT”s, that is, “Professional Persons Arranging Transactions”, to monitor for infringements of the insider trading and market manipulation rules, REMIT II will require this of a larger group of entities, namely “PPAET” s. These are “Professional Persons Arranging or Executing Transactions” and include most Market Participants. In effect, REMIT II brings the requirement to monitor up to the same level as MAR. In some cases, Suspicious Transaction Reports will also need to sometimes be submitted to NRAs.

Monitoring is a requirement to be “effective” and “proportionate to the risk and size” of the covered activity. This is again similar in nature to MAR.

In some cases, this requires the implementation of a transaction surveillance system. However, where appropriate, effective monitoring can be achieved by a different combination of processes, technology and training.

### **Lesson for ENERGY TRADER:**

Pure LNG activity is unlikely to give rise to a surveillance system, requirement. However, it will be necessary to consider appropriate non system monitoring in due course.

## 2.6. Increased powers for ACER and other rules around sanctioning

### Investigation for Cases with Cross-Border Impact

In REMIT II ACER's powers have now been extended to:

- conducting on-site inspections as part of investigatory powers;
- requesting information, and granting;
- revoking authorizations of Inside Information Platforms (IIPs) and Registered Reporting Mechanisms (RRMs).

Under REMIT II, ACER has been empowered to impose periodic penalty payments to ensure compliance with its inspection-decisions and information requests. The competence to impose fines for violations of REMIT remains exclusively with NRAs.

The practical implementation of these investigatory powers remains uncertain, as national laws typically exclude non-national authorities from conducting investigations or enforcing decisions within their borders. There are very few exemptions to this rule (e.g. EUROPOL) that only national state authorities are empowered to enter buildings and involve in onsite searches.

REMIT II grants ACER the authority:

- to investigate cases with a cross-border dimension and
- to prioritize them.

It specifies that ACER can investigate cases affecting at least two member states, marking a departure from REMIT I where all investigatory powers were reserved for NRAs of EU Member States, with ACER limited to supporting national investigations.

National Regulatory Authorities (NRAs) retain the ability:

- to contest the agency's investigatory powers if they've previously examined similar cases;
- maintain the right to request the agency's involvement in cross-border cases and to object to its actions accordingly.

The determination of whether a case has a cross-border dimension depends on the “delivery of wholesale energy products across multiple Member States”. However, pinpointing the exact delivery location is sometimes impossible, like when it happens within bidding or balancing zones spanning multiple Member States, or in case of LNG cargo sales.

For instance, when delivery of wholesale energy products takes place or is assumed to take place in a bidding zone which encompasses the territory, or part of the territory, of at least two Member States in the intra-day and day-ahead wholesale electricity markets, it is not possible to identify the precise place of that delivery within that zone. To ensure genuine cross-border cases are addressed, delivery within such zones should be treated as occurring in a single Member State.

#### **Lesson for ENERGY TRADER:**

For LNG supply, the definitions of cross-border sales do not fit. Therefore, it looks like any investigation against ENERGY TRADER may be introduced by the chosen NRA. The exception to this is the case where the NRA cannot perform the investigation, in which case ACER may get involved.



## Harmonisation of sanctions for REMIT infringements

Sanctions of infringement have remained exclusively in the power of the member states. This national discretion on how to sanction REMIT infringements, has led to substantial differences in fining for REMIT infringements across the EU. At present, identical infringements could lead to prison sentence in one EU-member state, but only trigger a financial fine in another EU member state. The Commission has been critical of the regulatory arbitrage. REMIT II aims at ensuring the consistent application of administrative fines across the Member States for breaches of Regulation (EU) No 1227/2011.

REMIT II enables ACER to provide for a list of administrative fines and other administrative measures available to the NRA as well as for a list of criteria to determine the level of those administrative fines. ACER is empowered to regulate the maximum level provided for REMIT breaches but does not limit Member States' ability to provide for lower administrative fines on a case-by-case basis.

According to REMIT II, penalties for REMIT-breaches should be

- ✓ proportionate,
- ✓ effective, and
- ✓ dissuasive.
- ✓ should reflect the type of the breaches and avoid double sanctioning.

Aim of this new measure is to achieve a consistent approach among national regulatory authorities.

### **Lesson for ENERGY TRADER:**

This change is of general interest and is meant to reduce regulatory arbitrage. Correggio can advise ENERGY TRADER on finding practices of NRA's, should this topic of interest to ENERGY TRADER.

## Annex (TEXT AS PUBLISHED):

[https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L\\_202401106](https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:L_202401106)