

## European Commission Proposes Legislation on Energy Market Integrity and Transparency

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Now that the European Commission has published its proposed Regulation on energy market integrity and transparency (REMIT), energy-sector participants are encouraged to become familiar with new reporting requirements designed to increase consumer and industry confidence in the wholesale energy markets.

On 8 December 2010, the European Commission (EC) published its proposed Regulation on energy market integrity and transparency (REMIT). The aim of REMIT is to increase both consumer and industry confidence in the wholesale energy markets. The EC believes that REMIT will address the issue of unfair trading, a practice which currently undermines public trust in the market and could lead to short-term volatility in energy prices as well as long-term rises in energy prices.

The EC drafted REMIT following a public consultation during the summer of 2010, after having sought views on the subject at both the European Gas Regulatory Forum in January 2010 and the European Electricity Regulatory Forum in December 2009. As per Article 1 of REMIT, rules will be established to prohibit “abusive practices on wholesale energy markets coherent with those applying to financial markets”.

### Filling a Gap

The EC has said that REMIT is aimed at markets which are not currently targeted by other pieces of legislation. For example, the Market Abuse Directive (MAD), which also is currently being reviewed by the EC, applies almost entirely to financial instruments admitted to trading on a regulated market. Therefore, neither physically settled spot markets products nor many over-the-counter commodity trades are covered by MAD, and commodity derivative products are only covered if traded on a regulated market.

The Regulation is also intended to supplement the proposals that were brought out in 2009 to enhance and integrate Europe’s energy markets, known commonly as the Third Energy Package, which itself is undergoing review.

## **Prohibition of Insider Trading and the Obligation to Publish Inside Information**

REMIT defines insider information as being precise information which has not been made public, relating directly, or indirectly, to wholesale energy products and which, if made public, could significantly affect the prices of such wholesale energy products; persons must not use that information to their advantage, or to the advantage of third parties in relation to the wholesale energy products to which the information relates. European Energy Commissioner Günther Oettinger has said that traders should be prevented from profiting from inside information.

Furthermore, inside information must not be disclosed to third parties, unless in the normal context of one's employment, and traders cannot recommend, or induce another person, on the basis of that information, to acquire or dispose of wholesale energy products to which that information relates. The publication of the information can be delayed to avoid harming the legitimate interests of an individual, but such delay must not be misleading to the public.

Market participants will be required to publish inside information relating to the business or facilities they own or control. Therefore, a market participant would not be allowed to withhold information, such as the shutting down of a power station, before trading on the market. This requirement has been praised by market commentators, who have said that new market entrants would find it easier to enter the energy sector due to the increased availability of transparent data. Currently, in many Member States, the publishing of electricity and gas generation data is voluntary, hence the difficulties faced by new entrants when attempting to enter the market, due to the lack of information concerning energy generation, storage and transport.

The EC is also very clear that it will be prohibited for any person to engage in, or attempt to engage in, market manipulation on wholesale energy markets.

## **Agency for the Cooperation of Energy Regulators**

The EC has charged the Agency for the Cooperation of Energy Regulators (ACER) with monitoring these markets. National regulatory authorities (Ofgem in the UK), financial regulators and competition authorities will coordinate with ACER, the latter of which would be primarily responsible for gathering, reviewing and sharing data from wholesale energy markets. ACER would bring the appropriate European-wide view of electricity and gas markets. The national authority in each Member State would be responsible for setting the penalties for failure to comply with REMIT.

ACER will be asked to submit an annual report to the EC detailing any activity that comes within the ambit of REMIT. The aim of the report would be to highlight any flaws in the market rules which could facilitate insider trading and market manipulation.

The Regulation has been welcomed by market participants such as the European Federation of Energy Participants (EFET). EFET is particularly keen on the introduction of the harmonised, European-wide legislation. However, they have stated that ACER's role and responsibilities should be clearly defined, so as not to have a duplication of function between ACER and the national regulatory authorities.

### Conclusion

The new rules are due to come into force in 2012. The Regulation still needs to be approved by both the European Council and Parliament. If the currently proposed version of REMIT is adopted, then the reformed EU market would look very similar to the Nordic market, where market participants must publish capacity changes on the NordPool energy exchange web page within ten minutes of such changes.

Market participants are encouraged to monitor any developments to REMIT, as well as the ongoing reviews of both MAD and the Markets in Financial Instruments Directive (see *On the Subject: Broad MiFID Review to Change the Landscape of the Commodity Derivative Markets*). Participants in the sector are strongly encouraged to be aware of the new reporting requirements that will be imposed on them.

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