

Questions & Answers

Disclaimer: The information in this section offers in no way a binding interpretation of Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency (REMIT). The right to interpret all aspects of this regulation is without exception reserved by the European Court of Justice.

1. What is a wholesale energy product?

Pursuant to Article 2(4) REMIT, the following contracts and derivatives are **wholesale energy products**, irrespective of where and how they are traded:

- contracts for the supply of electricity or natural gas where delivery is in the Union
- derivatives relating to electricity or natural gas produced, traded or delivered in the Union
- contracts relating to the transportation of electricity or natural gas in the Union
- derivatives relating to the transportation of electricity or natural gas in the Union

Pursuant to Article 3(1)(a)(vii) of Implementing Regulation 1348/2014, contracts for the supply of electricity or natural gas to a single consumption unit with a technical capability to consume 600 GWh/year or more are also wholesale energy products and must thus be reported to ACER.

ACER views all contracts for the supply or transportation of electricity or natural gas that are traded intraday, within-day, day-ahead, two-day-ahead, weekend, long-term or for any other time period generally accepted in the market as contracts for the supply or transportation of electricity or natural gas. Derivatives are interpreted as financial instruments according to (4) to (10) of Section C of Annex I to Directive 2004/39/EC (MiFID), as implemented in Articles 38 and 39 of Regulation 1287/2006.

To simplify reporting, ACER keeps and regularly updates an (indicative) public list of standard contracts for the supply or transportation of electricity and natural gas. Click the following link to access the list: <https://www.acer-remit.eu/portal/standardised-contract>

2. What is a single consumption unit?

Pursuant to Article 3(1)(a)(vii) of Implementing Regulation 1348/2014, contracts for the supply of electricity or natural gas to a single consumption unit with a technical capability to consume 600 GWh/year or more must be reported to ACER.

The single consumption unit is a single demand facility which consumes electricity or gas and is connected to the network at one or more connection points. ACER also understands electricity and gas distribution networks to be consumption units with regard to electricity or gas that serves to cover grid losses. For this reason, distribution system operators with grid losses above a threshold of 600 GWh/year are considered final customers and market participants under REMIT.

3. What is the “technical capability to consume” of a single consumption unit?

ACER understands the “technical capability to consume” to mean the maximum amount of energy that a final customer could consume in a year, i.e. if the customer were to run its facility fully at all times throughout the year.

The consumption of electricity and gas should be assessed separately to estimate whether it reaches the 600 GWh/year when the facility is running fully at all times. If a single consumption unit consumes 600 GWh/year or more of either gas or electricity, then it is clear that its “technical capability to consume” is also greater than 600 GWh/year and therefore all contracts for the supply to this single consumption unit are reportable.

If a single consumption unit typically has an annual consumption of below 600 GWh/year, final customers should make an assessment of the unit’s technical capability to consume. To do this, consideration should be given to the consumption capability of the unit in the first instance, i.e. the amount of energy that would be consumed if the single consumption unit were to run at its maximum output over a year.

If on this basis the single consumption unit has a consumption capability of 600 GWh/year or more, final customers may also consider the maximum amount of energy that can flow from the network into the unit to determine if this import capacity constrains the unit’s technical capacity to a lower level.

Final customers should also be aware that if there is any change to the technical capability to consume of a single consumption unit, they should re-evaluate whether this unit reaches or exceeds the 600 GWh/year threshold.

ACER suggests caution around the use of historical consumption to estimate technical capability to consume as this does not relate to the actual capability of the unit and circumstances can change which might result in additional consumption. For this reason, technical capability to consume should only be assessed based on historical consumption data in exceptional cases.

4. Are guarantees of origin and emissions allowances wholesale energy products?

ACER does not consider guarantees of origin and emissions allowances wholesale energy products, as they do not meet the criteria outlined in Article 2(4) REMIT. ACER is aware that such contracts can have a significant effect on the prices of wholesale energy products. Pursuant to Article 10 REMIT, ACER and authorities responsible for overseeing trading in emissions allowances or derivatives relating to emissions allowances shall cooperate with each other and establish appropriate mechanisms to provide ACER with access to records of transactions in such allowances and derivatives where those authorities collect information on such transactions.

5. What is a wholesale energy market?

Article 2(6) REMIT defines a wholesale energy market as any market within the Union “on which wholesale energy products are traded”.

Pursuant to Recital 5 REMIT, wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, and price formation in both sectors is interlinked. They include, inter alia, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers.

ACER interprets this definition of wholesale energy markets as at least including the following markets:

- balancing markets for the trading of electricity and natural gas with delivery in the Union;
- intraday or within-day markets for the trading of electricity and natural gas with delivery in the Union;
- day-ahead or two-day-ahead markets for the trading of electricity and natural gas with delivery in the Union;
- physical markets for the trading of electricity and natural gas with delivery in the Union, including markets for physical forward contracts and non-standardised long-term contracts;
- markets for the transportation capacities of electricity or natural gas in the Union;
- derivatives markets relating to electricity or natural gas produced, traded or delivered in the Union, including financial OTC markets;
- derivatives markets relating to the transportation of electricity or natural gas in the Union.

In the future, also capacity mechanisms may be considered.

6. What is a market participant?

Pursuant to Article 2(7) REMIT, “market participant” means any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets. The notion of a market participant is therefore closely linked with the understanding of the notions of “wholesale energy market” and “wholesale energy product”.

ACER currently considers at least the following persons to be market participants under REMIT if entering into transactions, including orders to trade, in one or more wholesale energy products, irrespective of where and how they are traded:

- energy trading companies in the meaning of “electricity undertaking” pursuant to Article 2(35) of Directive 2009/72/EC carrying out at least one of the following functions: transportation, supply or purchase of electricity, and in the meaning of “natural gas undertaking” pursuant to Article 2(1) of Directive 2009/73/EC carrying out at least one of the following functions: transportation, supply or purchase of natural gas, including LNG;
- producers of electricity or natural gas in the meaning of Article 2(2) of Directive 2009/72/EC and Article 2(1) of Directive 2009/73/EC, including producers supplying their production to their in-house trading unit or energy trading company;
- shippers of natural gas;

- wholesale customers in the meaning of Article 2(8) of Directive 2009/72/EC and Article 2(29) of Directive 2009/73/EC;
- final customers in the meaning of Article 2(9) of Directive 2009/72/EC and Article 2(27) of Directive 2009/73/EC, unless they only conclude transactions for the supply and distribution of electricity and natural gas for their own consumption, with maximum consumption capacity staying below 600 GWh/year;
- transmission system operators in the meaning of Article 2(4) of Directive 2009/72/EC and Directive 2009/73/EC;
- storage system operators in the meaning of Article 2(10) of Directive 2009/73/EC;
- LNG system operators in the meaning of Article 2(12) of Directive 2009/73/EC;
- investment firms in the meaning of Article 4(1) No 1 of Directive 2004/39/EC.

Further reasons as to the inclusion of storage system operators and/or LNG system operators are stated in the relating ACER Guidance:

http://www.acer.europa.eu/remit/Pages/ACER_guidance.aspx

7. What obligations do market participants have?

- The obligation to publish inside information according to Article 4 REMIT;
- the obligations referred to in Article 3(4)(b) REMIT if an exemption from the prohibition of insider trading applies;
- the obligations of data collection and reporting according to Article 8 REMIT;
- the obligation stipulated by Article 9(1) REMIT to register with the national regulatory authority in the member state in which market participants are established or resident or, if they are not established or resident in the Union, in the member state in which market participants are active, if such market participants are entering into transactions which are required to be reported to ACER in accordance with Article 8(1) REMIT.

8. What is inside information?

According to Article 2(1) REMIT, “inside information” means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products. “Information” means in any case:

- information which is required to be made public in accordance with Regulations 714/2009 and 715/2009, including guidelines and network codes adopted pursuant to those Regulations;
- information relating to the capacity and use of production, storage, consumption, transmission and LNG facilities, including planned or unplanned unavailability of these facilities;
- information which is required to be disclosed in accordance with legal or regulatory provisions at Union or national level, market rules, and contracts or customs on the

- relevant wholesale energy market, in so far as this information is likely to have a significant effect on the prices of wholesale energy products;
- other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.

Recital 12 REMIT states that information regarding the market participant's own plans and strategies for trading should not be considered as inside information. For more details on the terms "trading plans" and "trading strategy" as well as examples of inside information, please refer to the ACER Guidance.

http://www.acer.europa.eu/remit/Pages/ACER_guidance.aspx.

9. What does "market manipulation" mean?

Pursuant to Article 2(2) REMIT, "market manipulation" means:

- a) entering into any transaction or issuing any order to trade in wholesale energy products which
 - i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
 - ii) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that their reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or
 - iii) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products; or
- b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news, where the disseminating person knew, or ought to have known, that the information was false or misleading.

When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:

- (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
- (ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products.

Any engagement in, as well as any attempt to engage in, market manipulation on wholesale energy markets is prohibited (Article 5 REMIT).

10. Who is obliged to disclose inside information?

Article 4(1) REMIT requires market participants to publicly disclose inside information in an effective and timely manner. Such information relates to businesses 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.

This obligation to disclose inside information also applies to or person employed by, or acting on behalf of, a market participant when that person discloses inside information to any other person in the normal course of the exercise of their employment, profession or duties as referred to in Article 3(1)(b) of REMIT. That market participant or person is required to ensure simultaneous, complete and effective public disclosure of that information.

11. Who is subject to the prohibition of insider trading?

The prohibition of insider trading applies to the following persons who possess inside information in relation to a wholesale energy product:

- members of the administrative, management or supervisory bodies of an undertaking;
- persons with holdings in the capital of an undertaking;
- persons with access to the information through the exercise of their employment, profession or duties;
- persons who have acquired such information through criminal activity;
- persons who know, or ought to know, that it is inside information.

12. Does REMIT also apply to unsuccessful attempts to engage in market manipulation?

According to Article 5 REMIT, any engagement in, or attempt to engage in, market manipulation on wholesale energy markets is prohibited.

13. What are the main duties of national regulatory authorities?

National regulatory authorities are obliged to monitor and investigate alleged cases of breaches of REMIT. Such breaches can include:

- breaches of the market abuse prohibitions pursuant to Articles 3 and 5 REMIT;
- breaches of the obligation to promptly notify the relevant information to ACER and the competent national regulatory authority about a delay in the public disclosure of inside information pursuant to Article 4(2) REMIT;
- breaches of the obligation to provide ACER with a record of wholesale energy market transactions including orders to trade pursuant to Article 8(1) REMIT;
- breaches of the obligation to register with the competent national regulatory authority pursuant to Article 9 REMIT;

- breaches of the obligations of persons professionally arranging transactions pursuant to Article 15 REMIT