

Client Alert

Energy and Infrastructure Projects

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Changes to REMIT

WHAT IS REMIT?

REMIT is Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency which has been in force since 28 December 2011.

Its purpose is to support open and fair competition in the European wholesale energy markets and to prevent market abuse and manipulation. It imposes certain registration, disclosure and (since 2016) trade reporting obligations for those engaged in wholesale gas (including liquified natural gas) and power transactions in EU markets (otherwise known as “**market participants**”). Where a wholesale energy transaction is reportable, the party to that transaction must first register as a market participant. Any person concluding a wholesale energy transaction in an EU member state or in the UK must register as a market participant, even if they have no other EU-nexus. In 2022, there were more than 16,000 market participants and 4.4 billion reported transactions, 129 of which were reported as suspicious.

The Agency for the Cooperation of Energy Regulators (“**ACER**”), an EU body, coordinates market monitoring alongside the national regulatory authority of each EU member state (the “**NRAs**”). The NRAs are additionally responsible for investigating and enforcing compliance with REMIT.

The UK, following its departure from the EU, is no longer a member of ACER. However, the UK’s Office of Gas and Electricity Markets has stressed that it will continue to cooperate with ACER and the NRAs to detect and investigate cross-border market abuse, to the maximum extent possible.

WHAT ARE THE CHANGES TO REMIT AND WHO DO THEY AFFECT?

On 16 November 2023, the European Commission, the European Parliament and the Council reached a provisional political agreement on the review of REMIT. As per an official statement¹, the co-legislators agreed on the following:



1. Registration of Market Participants

Market participants from third countries will have to designate a representative physically located in an EU member state in which the market participants are active in the wholesale energy market. The representative must be designated by a written mandate and authorized to act on behalf of the market participant.

Additionally, market participants must ensure that their representatives have the necessary powers and means to ensure their efficient and timely compliance with the decisions, and cooperation with the requests for information, of ACER and the NRAs.

2. ACER's Decision-Making Powers and Competence to Impose Sanctions

The scope of ACER's decision-making powers will be expanded to include on-site inspections, requests for information and authorizations or withdrawal of authorizations of so-called Inside Information Platformsⁱⁱ and Registered Reporting Mechanismsⁱⁱⁱ.

In addition, ACER will have the power to impose periodic penalty payments in order to ensure compliance with on-site inspection decisions and requests for information.

The power to impose fines for infringements or breaches of the prohibitions or substantive obligations included in the regulation will remain in the hands of the member states.

3. ACER's Investigation Powers

ACER will have the right to investigate cases with a cross-border dimension, involving at least two member states, and to prioritize such cases. NRAs will continue to be able to object to the exercise of the agency's investigatory powers when the NRAs have formally opened or have conducted an investigation on the same facts (provided they do so within three months).

WHEN WILL THE CHANGES BE EFFECTIVE?

The provisional agreement now needs to be formally approved by both the European Parliament and the Council before it can become binding. This is expected to take place in early 2024.

Once finalized, the revised REMIT will enter into force 20 days following its publication in the EU Official Journal, subject to any agreed transitional provisions.



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ⁱ <https://www.consilium.europa.eu/en/press/press-releases/2023/11/16/protection-against-market-manipulation-in-the-wholesale-energy-market-council-and-parliament-reach-deal/>

ⁱⁱ Electronic systems for the delivery of information which allow multiple market participants to share information with the wider public and comply with the minimum quality requirements listed in the ACER Guidance.

ⁱⁱⁱ Mechanisms that report trade and/or fundamental data directly to ACER under REMIT.