ACER
Agency for the Cooperation of Energy Regulators

# REMIT Quarterly

*ACER guidance on the application of REMIT and transaction reporting*

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## First penalty imposed for market manipulation prohibited under REMIT in the French natural gas sector

**Article 5 of REMIT prohibits any engagement in, or any attempt to engage in market manipulation on wholesale energy markets.**

In October 2018, the Dispute Settlement and Sanctions Committee (CoRDiS) of the French National Regulatory Authority, Commission de Régulation de l'Energie (CRE), imposed a fine of EUR 5 million on the energy and commodities company VITOL S.A. (Vitol) for engaging in market manipulation, in breach of Article 5 of REMIT. This decision is the outcome of an investigation opened by CRE in April 2014.

CoRDiS held that, between 1 June 2013 and 31 March 2014, Vitol engaged in market manipulation on the French Southern virtual Gas Trading Point (PEG Sud)[1].

More specifically, CoRDiS found that Vitol carried out, over the course of 65 cases spread over 54 trading days, a modus operandi consisting of the following steps:

- First, Vitol would issue multiple sell orders, generally at the beginning of the trading day (especially before 3 p.m.), when liquidity was low. As the day moves along Vitol would issue sell orders at gradually decreasing prices. These sell orders would then decrease after 4 p.m. during the more liquid period of the day;
- Second, once market prices had decreased, Vitol would engage in important purchases;
- Third, after having proceeded with those purchases, Vitol would cancel its sell orders to finish the day as a net buyer.

In its sanction decision[2], CoRDiS held that this behaviour was likely to give the market misleading signals as to the supply and demand on the PEG Sud. By issuing multiple sell orders while the interest was actually on the buying side of the order book, using iceberg orders to fulfil its buying interest and eventually cancelling the previously placed sell orders, Vitol's behaviour gave the impression of a relatively abundant supply to other market participants (MPs).

CoRDiS stressed that, in isolation, the piling of sell orders, the use of iceberg orders on the buy side and the cancellation of sell orders cannot be sufficient to constitute market manipulation within the meaning of REMIT. Yet, the succession and the accumulation of these three elements reinforces the analysis according to which the scrutinised behaviour was likely to give false or misleading signals to other MPs.

[1] For more information, please see: https://www.cre.fr/en/News/The-Dispute-Settlement-and-Sanctions-Committee-CoRDiS-imposes-a-penalty-for-market-manipulations-on-the-wholesale-energy-market.

[2] The Decision is available here: https://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000037519808&categorieLien=id.

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## ACER Energy Market Integrity and Transparency Forum 2019

The Agency is pleased to announce that the Agency's Energy Market Integrity and Transparency Forum 2019 will take place in Ljubljana in the afternoon of 5 September and the morning of 6 September. The event will be once again organised with the support of the Slovenian Ministry of Foreign Affairs.

The described behaviour corresponds to market manipulation as defined in Article 2(2)(a)(i) of REMIT:

*'entering into any transaction or issuing any order to trade in wholesale energy products which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products'*.

CoRDiS referred in its decision to the practice of 'placing and withdrawing false orders' identified by REMIT as one of the forms of market manipulation (Recital 13 of REMIT). Finally, CoRDiS held that, in most of the identified occurrences, Vitol's behaviour could have had a potential influence on price formation.

Out of the 65 cases where market manipulation was observed, a measurable effect on prices could be established in 45 of those cases.

CoRDiS decided to impose on Vitol a financial penalty of EUR 5 million in application of the French Energy Code, according to which the sanction should be proportionate to the seriousness of the breach, the situation of the person concerned, the extent of the damage and the benefits derived from the breach. Vitol appealed the decision to the French Council of State (*'Conseil d'Etat'*).

The updated ACER Guidance (available here), provides in Section 6 examples of different types of order-based practices that can constitute market manipulation, including the practice involved in this case, meaning layering and spoofing.

## Overview of contingency reports opened by registered reporting mechanisms (RRMs)

The purpose of this recently introduced section is to communicate the number and status of contingency reports opened by RRMs, as well as the most common reasons for which RRMs resort to contingency in the first place.

The latest statistics show that, in total, 13 different RRMs submitted 23 contingency reports between January 2019 and March 2019.

Out of the 23 registered contingency reports, 17 have already been closed, while 6 were still open as of late March.

The contingency reports mostly concerned technical issues that had temporarily hindered an RRM's reporting, or data quality issues that had been observed.

## Overview of REMIT data reported between 2016 and 2018

In 2018, 100 RRMs reported almost 900 million records of transactions for nearly 10,000 MPs.

While the number of reporting parties increased less than 10%, the number of records of transactions increased 56% compared to 2017.

In 2018, the average number of reported records per MP was around 94,000; however, 50% of MPs reported fewer than 30 records each (Table 1). In other words, a relatively small group of MPs reports the majority of records.

*Table 1: Numbers of reported records of transactions per MP and RRM almost doubled in 2018*

| | | MPs | | | RRMs | | |
|---|---|---|---|---|---|---|---|
| | | 2016 | 2017 | 2018 | 2016 | 2017 | 2018 |
| Number of entities | Registered | 11,873 | 12,895 | 13,971 | 110 | 117 | 119 |
| | Registered for Table 1-4 | | | | 103 | 108 | 111 |
| | Active | 8,708 | 8,977 | 9,344 | 92 | 99 | 100 |
| Number of all records per entity | Median | 18 | 28 | 29 | 10,687 | 14,482 | 13,946 |
| | Average | 41,516 | 62,682 | 94,125 | 4 million | 6 million | 9 million |
| | Top 5 contributors | 109 million | 207 million | 334 million | 281 million | 437 million | 728 million |
| | All entities | 362 million | 563 million | 879 million | 362 million | 563 million | 879 million |

*Source: ACER, ARIS.*

The same holds true for RRMs: in 2018, 50% of all RRMs reported fewer than 15,000 records of transactions, while the three most active RRMs reported 66% of all records of transactions.

**Data quality assurance activities at the Agency in the first quarter of 2019**

**Standard supply contracts**

The Agency is committed to ensuring a high quality of the transaction data provided by the reporting parties, in order to advance its own market monitoring capabilities and the market monitoring capabilities of national regulatory authorities (NRAs).

The Agency conducts assessments of the completeness, accuracy and timely submission of the data received under REMIT on an ongoing basis.

In the first quarter of 2019, the Agency conducted a series of data quality analyses on the reported standard supply contracts, with the main focus being the consistency of life cycle event reporting and the accuracy of certain fields across various markets.

The Agency has escalated some reporting inconsistencies with relevant NRAs and is in the process of clarifying the issues with specific reporting parties. According to Article 6(8) of the Implementing Regulation, the Agency may request additional information and clarifications from the reporting parties in relation to their reported data.

**Electricity and gas transportation contracts**

Reporting parties report the details of electricity and gas transportation contracts,

as set out in Table 3 and Table 4 of the Annex to the Commission Implementing Regulation No 1348/2014, using the schemas for reporting that were developed in collaboration with ENTSO-E and EDIGAS.

With regard to electricity transportation contracts, we can differentiate between *allocation* (primary market – transmission system operator to MPs), rights (secondary market - amongst MPs), and *bids* submitted by MPs.

On the other hand, we can divide gas transportations into *allocations* (primary market – transmission system operator to MPs), and *rights* (secondary market - amongst MPs).

Based on a recent analysis that the Agency performed on such contracts using reference data from the official websites of platforms like JAO and PRISMA, the quality of the reported data was found to be fairly good in terms of completeness and timeliness, while the issue of the identification of MPs still persisted.

Reporting trends related to the number of continuously collected electricity and gas transportation contracts were found to be stable, however it was possible to discern a slight increasing trend. To keep a close eye on the electricity and gas transportation contract market developments and data quality, special dedicated reports, such as trading replication reports, have already been developed by the Agency in order to analyse the accuracy and RRM reporting statistics for these particular data types.

**Non-standard contracts**

A non-standard contract is defined as a contract concerning any wholesale energy product that is not a standard contract. Reporting parties report the details of non-standard contracts as set out in Table 2 of the Annex to the Commission Implementing Regulation No 1348/2014.

However, the details of transactions executed within the framework of non-standard supply contracts specifying at least an outright volume and price shall be reported using Table 1 of the Annex to the Implementing Acts.

In early 2019, the Agency carried out an analysis of the data related to non-standard contracts for commodity natural gas with physical settlement method indicating the contract date within 2018. In that set of data, almost 1600 MPs reported around 30,000 different contracts.

The Agency has identified several data quality issues, in particular with regard to the dimensions of accuracy and consistency (e.g. estimated notional amount, prices, units and total notional contract quantities) and the executions of these non-standard contracts. The Agency will perform additional analyses of the reported non-standard contracts and will continue to work closely with the NRAs in the future.

## Update of REMIT documentation

**The Agency published new and updated documentation for market participants and other stakeholders in order to provide additional guidance on REMIT-related matters.**

**Guidance Note 1/2019 – Layering and Spoofing**

On 22 March 2019, the Agency published a guidance note to provide further clarification on the application of REMIT in the context of trading behaviours associated with layering and spoofing.

The guidance note describes a general framework that promotes a consistent approach to the NRAs' assessment of these behaviours.

Layering and spoofing refers to the issuing by an MP of one large or multiple non-genuine orders to trade on one side of the order book, in order to enter into one or multiple transactions on the other side of the order book. This trading behaviour is likely to send false or misleading signals to other MPs regarding the market outcome of a wholesale gas or electricity product.

The perception of layering and spoofing undermines confidence in market signals. If MPs perceive that the order book does not reflect market fundamentals, they may lose confidence in the integrity and transparency of the market, and even withdraw from it. As a result, competition would be adversely affected, to the detriment of all MPs and final consumers of energy. This is the third guidance note published by the Agency in the area of market abuse. The previous guidance notes covered the behaviours of transmission capacity hoarding and wash trades.

The Guidance Note on layering and spoofing is available here.

The updated ACER Guidance on the application of REMIT can be found here.

**ANNEX IV – Guidance on UTI**

On 7 January 2019, the new version (v.2.0) of the UTI Generator tool and the Guidance were published on the REMIT Portal under Annex IV to the TRUM.

The Agency had discussed the new tool extensively during roundtable meetings with stakeholders.

In Version 2.0 of the UTI Generator, several improvements have been introduced, such as the option for two MPs which need to generate a Unique Transaction Identifier (UTI) to insert input data using different units.

The updated version of the Guidance includes a more comprehensive explanation on how to use the improved tool.

**FAQs on REMIT Fundamental Data and Inside Information**

The 5th edition of the FAQs on fundamental data and inside information presents a new FAQ on gas trade notifications (nominations) and contains updates of eight existing FAQs. The majority of updates are related to FAQs on the disclosure of inside information.

As requested by the stakeholders, the Agency has introduced the kWh/h unit in the schema and thus updated the relevant FAQs on unit conversion.

### Use the ACER Notification Platform to report suspected REMIT breaches

In 2018, a total of 100 suspicious transaction reports were notified to the Agency and the respective NRA. In the Agency's efforts to identify potential REMIT breaches, these notifications represent an important source of information.

Any person professionally arranging transactions in wholesale energy products who reasonably suspects that an observed market behaviour may constitute insider trading, market manipulation or attempted market manipulation, has the obligation to notify the NRA without further delay (Article 15 of REMIT). The Agency's Notification Platform for the notification of suspicious transaction reports (STRs) offers the possibility to fulfil this obligation.

The Agency encourages everyone to use the notification platform to notify suspected breaches[1] of REMIT.

Submit a suspicious transaction report on the Notification Platform

[1]Meaning breaches under Articles 3, 4, 5, 8, 9 and 15 of REMIT.

## 186 REMIT Cases under Review

**The Agency had 186 REMIT cases under review at the end of Q1 2019.**

**REMIT cases are potential breaches of REMIT that are either notified to the Agency by external entities or identified by the Agency through its surveillance activities.**

A case could, after a thorough investigation by the relevant national authority, lead to sanctions.

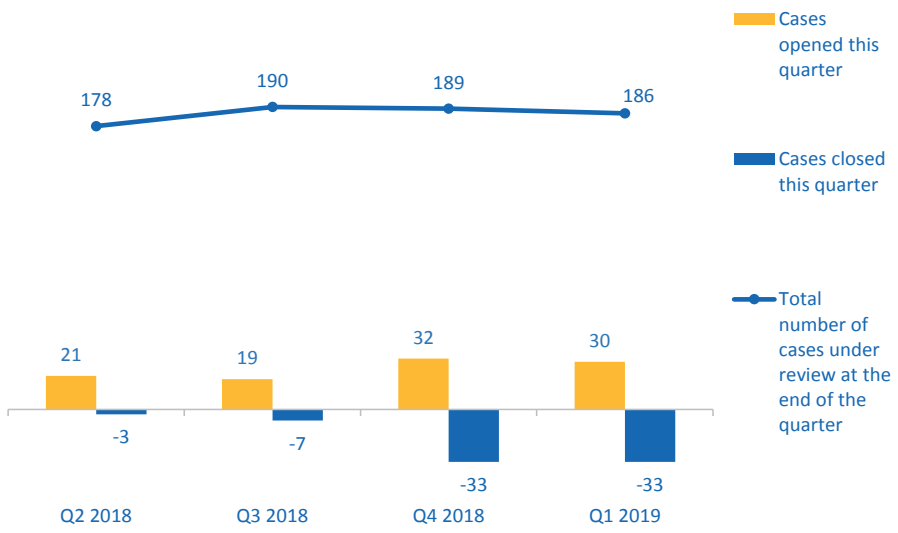
A case could also be closed without sanctions, for instance if the suspicions were unfounded.

Figure 1 shows the number of cases that were under review by the Agency in the last four quarters. It shows that the number of open cases has for the first time decreased.

Table 2 lists the cases where a Decision was issued by the relevant national authorities in the last four quarters.

Some of these Decisions are currently under appeal.

*Figure 1: Potential REMIT Breach Cases - Quarterly Statistics*




*Source: ACER, Case Management Tool.*

The Agency is responsible for the monitoring of wholesale energy markets and aims to ensure that NRAs carry out their tasks in a coordinated and consistent way.

It is not, however, responsible for the investigation of potential breaches of REMIT.

*Table 2: Overview of market abuse Decisions (breaches of Articles 3 and 5) imposing sanctions - 2015 – 2019*

| Decision date | NRA, Member State | Market Participant | Type of REMIT breach | Fine | Status | Source |
|---|---|---|---|---|---|---|
| 24 November 2015 | CNMC (ES) | Iberdrola Generación S.A.U. | Article 5 | EUR 25,000,000 | Under appeal | Link |
| 5 October 2018 | CRE (FR) | VITOL S.A. | Article 5 | EUR 5,000,000 | Under appeal | Link |
| 30 October 2018 | Prosecutor/DUR (DK) | Energi Danmark A/S | Article 5 | DKK 1,104,000 (approx. EUR 147,000)* | Final | Link |
| 28 November 2018 | CNMC (ES) | Galp Gas Natural, S.A. | Article 5 | EUR 80,000 | Under appeal | Link |
| 28 November 2018 | CNMC (ES) | Multienergía Verde, S.L.U. | Article 5 | EUR 120,000 | Under appeal | Link |
| 21 December 2018 | Prosecutor/DUR (DK) | Neas Energy A/S | Article 5 | DKK 153,000 (approx. EUR 20,400)* | Final | Link |
| 20 February 2019 | BNetzA (DE) | Uniper Global Commodities SE + Two traders | Article 5 | EUR 150,000 and fines of EUR 1,500 and EUR 2,000 for each trader respectively | Final | Link |

*Note: Article 18 of REMIT establishes that the rules on penalties for breaches of Article 3 and 5 of REMIT are established by the Member States. The implementation regime is therefore different across Member States and some breaches of REMIT may be sanctioned under national provisions. Please consult the sources for the status of the proceedings and more information on the Decisions.*

** This amount includes both the (i) fine and (ii) confiscated profit.*

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