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**CEER Memo on  
REMIT implementation at national level**

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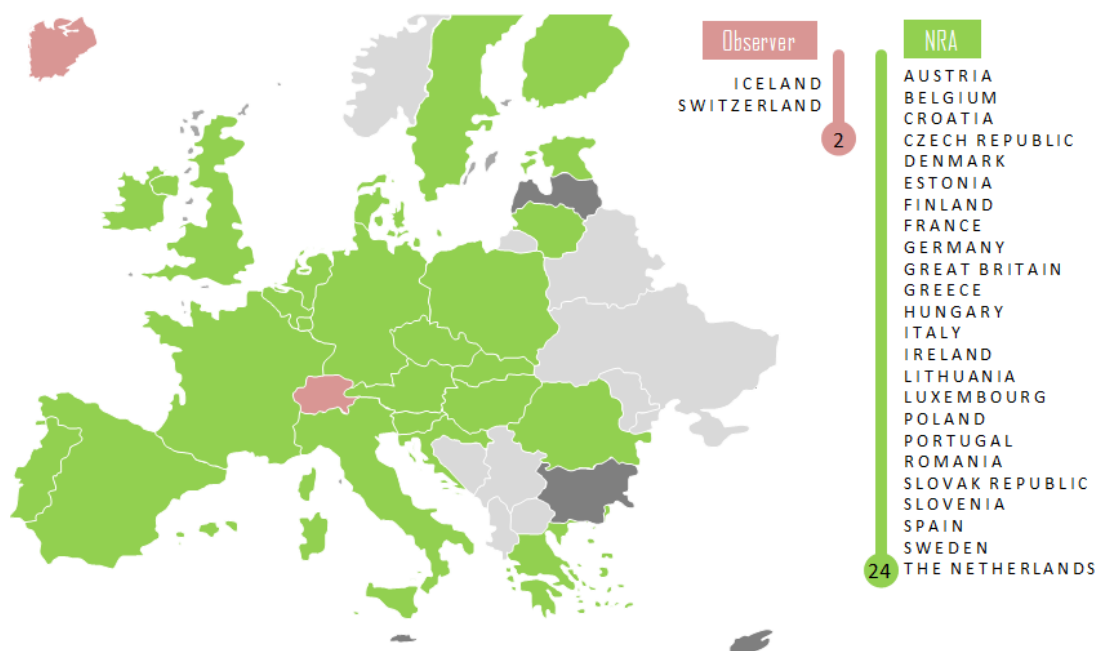


## 1 Introduction

Contributing to the implementation of the EU Regulation on Wholesale Energy Markets Integrity and Transparency (REMIT)<sup>1</sup> is a key focus of the Council of European Energy Regulators (CEER), in particular where REMIT provides a formal role for National Regulatory Authorities (NRAs). In this respect, CEER has conducted an internal survey of the application of REMIT at national level, in order to provide NRAs with a benchmark on this matter, in particular regarding the implementation of investigation and sanctioning powers at national level.

24 NRAs (plus 2 CEER observers), have provided information on REMIT implementation at national level (Please see Figure 1).

**Figure 1: Countries surveyed regarding REMIT implementation**



<sup>1</sup> [Regulation \(EU\) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency](#)



## **2 Main findings**

Input from NRAs in Spring 2014 provided an updated picture of the status of REMIT implementation at national level. Compared with previous surveys compiled on the same topic, the feedback from Spring 2014 confirms that overall, the implementation of REMIT is moving ahead in most Member States, although the transposition into national legislation is not yet complete in a number of countries.

### **2.1 Transposition of REMIT into national legislation**

REMIT foresees different steps and a timeline for its implementation at national level. With regards to the transposition of REMIT into national legislation, this should be done within eighteen months of REMIT coming into effect (29 June 2013), Member States shall ensure that all NRAs have, according to their national laws, the investigatory and enforcement powers necessary for the exercise of their REMIT duties (Article 13 of REMIT). Additionally, Member States shall set the rules on penalties applicable to infringements of REMIT (Article 18 of REMIT).

Based on input received, a majority of Member States have completed the transposition of Articles 13 and 18 of REMIT into national law in order to ensure that NRAs have the foreseen investigatory and enforcement powers, and that a sanctioning regime is in place. The legislation process is ongoing in almost all remaining countries where the implementation of REMIT is not yet fully achieved.

### **2.2 Market Monitoring activities**

Pursuant to Article 7 of REMIT, NRAs may carry out monitoring activities at national level. Although REMIT does not impose an obligation on NRAs to monitor trading activities, a majority of NRAs have received such a mandate or intend to do so, whilst a number of NRAs have decided not to perform monitoring activity or simply intend to define their approach on market surveillance at a later stage.

Within this framework, a number of NRAs have already established a dedicated REMIT team to monitor wholesale energy markets on a regular basis or have set up a shared team with other departments/units. A similar number of NRAs either intend to establish a monitoring team in the near future or do not yet have a plan on how/whether to perform monitoring activities.

With regard to the profile of staff within the monitoring teams, the range of competencies declared by NRAs is relatively diverse with a tendency to have on average more economists and analysts, followed by engineers specialised in network regulation. Lawyers and former market traders represent a small share of the average profile composition as well as IT experts in some cases.



Pending the establishment of the Agency for the Cooperation of Energy Regulators (ACER) data collection system, a number of NRAs are currently performing monitoring activities according to Article 7 of REMIT based on the trade and fundamental data available to NRAs. For the time being, only a limited number of NRAs make use of surveillance software, although a significant number of NRAs that intend to monitor energy markets at national level are planning to utilise one.

Cooperation with energy exchanges is deemed extremely relevant by NRAs for performing surveillance duties in an effective and efficient manner. The majority of NRAs cooperate or plan to cooperate with energy exchanges. This cooperation might be formal, through a Memorandum of Understanding (MoU) for instance, or it can be informal through regular meetings.

### **2.3 Investigatory powers**

According to Article 13 of REMIT, Member States shall entrust NRAs with the investigatory and enforcement powers necessary to ensure that the prohibitions against insider trading, market manipulation and that the obligation to publish inside information are applied.

Regarding the execution of investigatory powers, two main approaches emerge. Several NRAs have the full responsibility at national level to carry out investigatory activities against the breaches of REMIT. A comparable number of NRAs exercise their powers in collaboration with other authorities, including financial and competition authorities or, in the case of criminal offences, in collaboration with or by application to the judicial authority. Most NRAs have been granted substantial and additional investigatory powers to tackle market abuses according to REMIT. A minority of NRAs have been explicitly entrusted with some of the most “intrusive” powers foreseen by Article 13 (for example, the power to request in court a temporary prohibition of activity or a freezing/sequestering of assets).

Some NRAs have established or intend to establish a dedicated team to execute activities related to the investigation of possible breaches of REMIT, while other NRAs have no such dedicated team but a shared team or a case-by-case team. The range of professional backgrounds within the investigatory team seems to be relatively diverse, with a tendency to have mainly economists and analysts, followed by lawyers and engineers. If no dedicated team has been established, NRAs expect to determine the composition of the team on the basis of the specific case under investigation.

### **2.4 Sanctioning powers**

According to Article 18, Member States shall set the rules on penalties applicable to infringements of REMIT. The majority of countries have introduced a sanctioning regime based on REMIT while in some countries the legislative process is still ongoing.

A majority of NRAs have a mandate to perform sanctioning powers directly. In several countries, decisions about imposing sanctions are or will be taken in collaboration with other authorities, or by handing the case to a specific judicial authority.

Based on the responses received, a large majority of Member States have opted to have only administrative sanctions, while only a limited number of countries have both administrative and criminal sanctions specific to breaches of REMIT.



Although most countries apply administrative penalties, the sanctioning regime may vary from one country to another. For example, with regard to financial penalties, in some countries the sanctioning regime foresees different thresholds (“amount of money”) for different breaches; in other countries the financial penalties are instead defined as a percentage of the market participants’ turnover or are linked to the gain/loss associated with the breach. Finally, some Member States have introduced a sanctioning regime that reflects a mix of the approaches mentioned above.

## **2.5 Conclusion and next steps**

The results of the CEER survey on REMIT implementation at national level confirm that, overall, the application of REMIT is moving ahead in most Member States. At the same time, as of March 2014, the transposition of REMIT into national legislation is not yet complete in a number of countries, thereby missing the deadline set by the same Regulation. Although for some of them the legislative process could be very close to conclusion, a further analysis might help to understand better the current situation and identify possible shortcomings.

Most NRAs currently have limited human resources for both monitoring, investigation and sanctioning activities, although some NRAs have received additional resources after the implementation of REMIT through national legislation.

With regard to the penalty regime, despite the fact that most countries have opted for administrative sanctions, these seem to vary from one country to the other.

Finally, a deeper analysis on the scope of monitoring activities at national level (including its geographic reach) is perceived as important to understand and promote effective interactions among bodies performing surveillance on wholesale energy markets at European, national and regional level.

In 2015, CEER intends to carry out a new REMIT survey in order to update and further assess the implementation of REMIT at national level. After the adoption of the REMIT Implementing Acts by the European Commission, CEER expects that the implementation of REMIT will progress further, including data collection and registration of market participants, requiring a thorough monitoring of those developments.



## Annex 1 – CEER

The Council of European Energy Regulators (CEER) is the voice of Europe's national regulators of electricity and gas at EU and international level. Through CEER, a not-for-profit association, the national regulators cooperate and exchange best practice within and beyond Europe's borders. CEER includes national regulatory authorities from 33 European countries (the EU-28, Iceland, Norway, Switzerland, FYROM, Montenegro and growing).

One of CEER's key objectives is to facilitate the creation of a single, competitive, efficient and sustainable EU internal energy market that works in the public interest. More specifically, CEER is committed to placing consumers at the core of EU energy policy. CEER believes that a competitive and secure EU single energy market is not a goal in itself, but should deliver benefits for energy consumers.

CEER works closely with (and supports) the Agency for the Cooperation of Energy Regulators (ACER). ACER, which has its seat in Ljubljana, is an EU Agency with its own staff and resources. CEER, based in Brussels, deals with many complementary (and not overlapping) issues to ACER's work such as international issues, smart grids, sustainability and customer issues. European energy regulators are committed to a complementary approach to energy regulation in Europe, with the Agency primarily focusing on its statutory tasks related to EU cross-border market development and oversight, with CEER pursuing several broader issues, including international and customer policies.

The work of CEER is structured according to a number of working groups and task forces, composed of staff members of the national energy regulatory authorities, and supported by the CEER Secretariat.

This report was prepared by the Wholesale Energy Market Task Force of CEER's Market Integrity and Transparency Working Group.

CEER wishes to thank in particular the following regulatory experts for their work in preparing this memo: Biagio De Filpo, Fadhel Lakhoua, Audrey Giffard, Louise Edwards and Zoltan Pek.



## Annex 2 – List of abbreviations

Term	Definition
ACER	Agency for the Cooperation of Energy Regulators
CEER	Council of European Energy Regulators
NRA	National Regulatory Authority
MoU	Memorandum of Understanding
REMIT	EU Regulation on Wholesale Energy Markets Integrity and Transparency