

See discussions, stats, and author profiles for this publication at: <https://www.researchgate.net/publication/313887203>

# Surveilling European Energy Markets – Implementation of the European Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)

Conference Paper · February 2017

CITATIONS

0

READS

331

5 authors, including:



**Wilhelm Süßenbacher**

Fachhochschule Oberösterreich

13 PUBLICATIONS 12 CITATIONS

[SEE PROFILE](#)



**Clemens Wagner-Bruscsek**

MAPNA Electric & Control Engineering & Manufacturing

1 PUBLICATION 0 CITATIONS

[SEE PROFILE](#)

Some of the authors of this publication are also working on these related projects:



Multidisziplinäres Simulationsmodell der europäischen Elektrizitätswirtschaft [View project](#)

# Surveilling European Energy Markets – Implementation of the European Regulation on Wholesale Energy Market Integrity and Transparency (REMIT)

## 1. Energiemärkte

Wilhelm SUESSENBACHER<sup>(1)</sup>, Clemens WAGNER-BRUSCHEK<sup>(1)</sup>, Antonia MAEDEL<sup>(1)</sup>, Geoff BOON<sup>(1)</sup>, Johannes MAYER<sup>(1)</sup>

(1) Energie-Control Austria<sup>1</sup>

### 1. Motivation

Integrity and transparency are the basis for trustworthy and well-functioning markets which ensure that prices and volumes reflect market fundamentals and outcomes are not distorted by abusive behaviour. This also applies to wholesale energy markets. As energy trading in Europe does not focus just on national markets but to a great extent on trading between different Member States and platforms with a variety of heterogeneous products it is necessary to provide a pan-European monitoring framework in order to ensure market integrity and transparency at European level. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT) aims to create such an efficient and effective oversight framework. It allows the Agency for the Cooperation of Energy Regulators (ACER) to collect relevant trading and fundamental data at market participant level, gives ACER and the national regulatory authorities (NRAs) the right to monitor the data and implements the prohibition of market manipulation and insider trading in the wholesale energy market. Getting access to such detailed data enables ACER and NRAs to detect abusive behaviour and to initiate enforcement of the corresponding sanctioning measures. Beyond its core areas, REMIT provides ACER and NRAs with deeper insights into the wholesale energy market and enables them to draw sensible conclusions for the optimisation of market rules. Therewith the Regulation represents a powerful tool to foster a transparent, trustworthy and well-functioning European wholesale energy market.

This paper aims to provide an overview on REMIT. The first section describes the methodological approach of the analysis. The following sections deal with the legal framework, the impact on stakeholders and the implementation of REMIT in Austria. The paper closes with the final conclusions and an outlook on the next steps at national level.

### 2. Methodological approach

The following subsections outline the different focal points and the methodological approach applied in the survey.

#### 2.1. Overview of the legal framework

The first part of the paper describes how REMIT is embedded in and inter-linked with other legal frameworks. This should contribute to a better understanding of the Regulation itself and its relevance for the integrity and transparency of the wholesale energy markets in Europe. Furthermore the most relevant definitions from the Regulation and their actual meaning are explained while considering all relevant interpretations provided by NRAs and ACER.<sup>2</sup>

#### 2.2. Impact of REMIT on stakeholders

Section two deduces and explains the obligations and effects of the Regulation on market participants, trading venues, NRAs and ACER. It also describes the steps that have to be taken to comply with REMIT. The focus of this section is on European obligations which have to be fulfilled, such as how

---

<sup>1</sup> The content of this paper reflects the opinion of the authors and does not necessarily represent the official position of Energie-Control Austria.

<sup>2</sup> In particular, ACER can publish non-binding guidance on the application of the definitions set out in REMIT.

orders and trades in wholesale energy products have to be reported to ACER, but as well on national aspects, such as the obligation to register as a market participant with the relevant NRA.

### 2.3. National implementation of REMIT

Section three provides an overview of the steps that have already been taken to implement REMIT at national level and the experience gained so far. Major deliverables of the project such as the national registration system (NRS) for market participants or internal processes for market monitoring under REMIT are described in order to demonstrate the measures taken to ensure market integrity and transparency in the wholesale energy market.

## 3. Overview of the legal framework

The development of the European internal energy market as envisaged by policy makers and regulators implied significant changes to fundamental structures of European energy markets. The means to trigger and foster this change was a series of updates and amendments to the regulatory rules governing these markets.

So far these reforms have led to highly connected markets with increasing volumes being traded on multilateral trading centres like exchanges. Such trading venues are, by regulatory design, the preferred place for certain transactions and the resulting market prices are intended to be public and transparent price signals to market participants.

Incentivising the use of such trading venues and the derived price signals requires market participants to trust these. A prerequisite for market participants' confidence in modern energy markets is that

- the integrity, i.e. fairness, of energy markets is maintained;
- the same rules apply to all market participants;
- prices reflect a fair and competitive interplay between supply and demand; and
- no profits from market abuse are allowed.

Clearly, it has to be one of the regulators' main objectives to ensure that modern energy markets have the above features.

While heading towards a joint European energy market, specifics of local markets, e.g. due to the leeway granted in the national transposition of Union wide energy regulation, must be taken into account. Moreover, many energy products (and the way they are traded) are hard to distinguish from financial products. So, working towards the above objectives will demand an approach that is consistent and compatible with the relevant financial regulations. It implies creating a consistent understanding of fundamental concepts and notions such as market abuse. This holds especially true when the boundary between financial and energy wholesale products becomes blurry.

The policy makers' tool of choice for this task consists of two regulations on wholesale energy market integrity and transparency. Their implementation is supported by a variety of (non-binding) guidelines and implementing specifications and deeply interwoven with financial markets regulation. The next two subsections provide an overview of this regulatory framework and introduce key concepts of the energy Regulations.

### 3.1. REMIT and its connection with other regulations

In 2011 European energy legislators introduced Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT). Together with the Commission Implementing Regulation (EU) No 1348/2014 (REMIT implementing acts) this constitutes the core of European legislation on market abuse in energy markets:

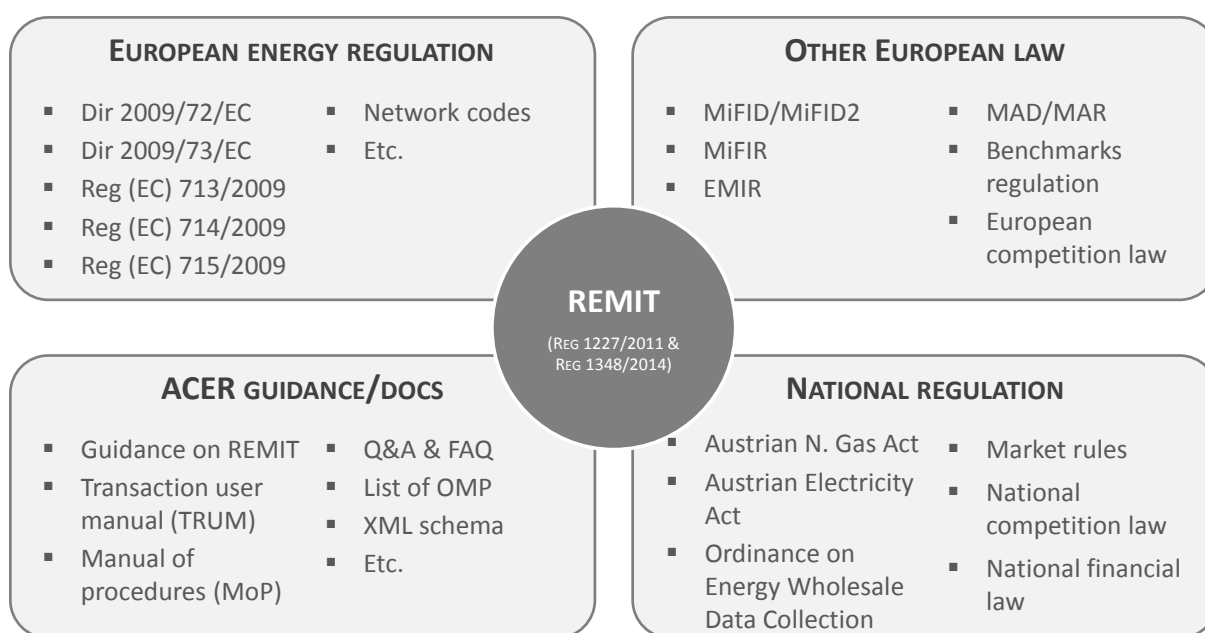
- **REMIT:** This Regulation establishes rules that prohibit abusive practices affecting wholesale energy markets and provide for the monitoring of wholesale energy markets by ACER in close collaboration with NRAs. These rules are compatible with the proper functioning of the wholesale energy markets and with corresponding provisions applicable in financial markets. In order to facilitate market surveillance, REMIT introduces obligations for market participants to report trade and order data to ACER. It also requires market participants to register with the respective NRA.

The document defines key notions such as insider trading, market manipulation and wholesale energy markets. It also defines key roles in the envisaged market surveillance system such as market participants, organised market places (OMPs) and persons professionally arranging transactions (PPATs).

- **REMIT implementing acts:** This Implementing Regulation adds details to the concepts and requirements established by REMIT. Most notably, it defines the scope of the data reporting requirements introduced by REMIT as regards the extent of wholesale energy products covered and the individual data fields.

Deadlines for the start of data reporting to ACER are defined in REMIT implementing acts as well.

These two Regulations lie at the heart of European legislation on energy market abuse. They are embedded in a framework of directly and indirectly related European regulation as well as a substantial amount of non-binding documents facilitating an effective implementation of the desired market surveillance framework. An overview is provided in Figure 1.



**Figure 1: Overview on the regulatory framework of REMIT**

**European energy regulation:** European energy law provides the regulatory basis for European energy markets and thus for the markets which REMIT is designed to monitor. This is especially true for the so-called 3<sup>rd</sup> energy package, which defines the key concepts and market roles which an effective market surveillance system needs to consider. The 3<sup>rd</sup> package is made up of the following legislative acts:

- Directive 2009/72/EC and Directive 2009/73/EC on common rules for the internal markets in electricity and natural gas;
- Regulation (EC) 714/2009 on cross-border exchanges in electricity;
- Regulation (EC) 715/2009 on conditions for access to the natural gas transmission network;
- Regulation (EC) 713/2009 establishing the Agency for the Cooperation of Energy Regulators (ACER); as well as
- the derived network codes and guidelines.

**European financial regulation:** The overlap of financial and energy regulation is dominated by traded products which could be considered either financial or energy products. The definition of a “financial instrument” can be found in Article 4(17) of Directive 2004/39/EC (MiFID) and its update in Article 4(15) of Directive 2014/65/EU (MiFID 2).

The most relevant part of financial regulation impacting REMIT comprises:

- **MiFID / MiFID 2:** These Directives, as well as derived regulations, govern provisions on investment services in financial instruments by classical financial institutions (e.g. banks) and a broad category of investment firms (including many energy market participants) and on different forms of trading venues. The notion of a financial instrument lies at the heart of identifying the scope of market surveillance in the financial sector as detailed by MAD/MAR (see below) as well as determining the extent of financial regulation's influence on energy market surveillance as stipulated by REMIT.
- **EMIR:** The European Market Infrastructure Regulation (EU) 648/2012 provides rules on the reporting of European derivatives transactions, on requirements for clearing through central counterparties and margins for uncleared trades. It is one of the first instances of large-scale collection of trade data in the Union. Derivatives covered by EMIR are specific types of financial instruments as defined in MiFID / MiFID 2 and may also comprise energy products. Among other things, EMIR required that transaction data be reported to financial regulatory authorities, even before REMIT.
- **CSMAD and MAR:** The Criminal Sanctions for Market Abuse Directive 2014/57/EU (CSMAD) and the Market Abuse Regulation (EU) 596/2014 (MAR) are the counterparts of REMIT in the financial sector. CSMAD, an update of the older Directive 2003/6/EC (MAD), requires Member States to implement legislation to ensure that market abuse can be effectively punished on equal level throughout the Union. MAR applies directly in all Member States and defines the scope of market abuse e.g. (attempted) insider trading, benchmark manipulation etc. MAD is explicitly referred to in Article 1 REMIT where REMIT's scope of applicability is limited as regards wholesale energy products (see next section) which are also financial instruments.

Another (recent) piece of financial regulation which has intersections with REMIT is the Benchmarks Regulation (EU) 2016/1011.

**National regulation:** From a national perspective, REMIT's legal framework is complemented by national transpositions of European energy law (e.g. in form of the Austrian Electricity Act and the Austrian Natural Gas Act), country-specific energy law in line with the European framework provided by network codes (e.g. the gas/electricity market code) or the Austrian transposition of REMIT, the Ordinance on Energy Wholesale Data Collection. For more details on national legislation, please consult section 5.1.

### 3.2. Core concepts of REMIT

REMIT is designed to provide measures against abusive behaviour in European energy markets. This requires legal definitions and concepts which are as precise as possible while being general enough to be applicable in various types of markets now and in the foreseeable future.

These definitions and concepts need to answer questions like: What constitutes market abuse? Which products / markets should be monitored? What are the responsibilities of various roles on the energy markets? Etc.

Amongst others, REMIT defines the following key notions:

- **Wholesale energy product (Article 2(4) REMIT):** From a commodity perspective, these products include contracts for the supply of electricity or natural gas where delivery is in the Union and derivatives relating to electricity or natural gas produced, traded or delivered in the Union. Moreover, contracts or derivatives relating to the transportation of electricity or natural gas in the Union are considered wholesale energy products.<sup>3</sup> For examples of such products, please refer to Article 3(1) of the REMIT implementing acts.
- **Market participant (Article 2(7) REMIT):** This is a natural or legal person (including a transmission system operator (TSO)) who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets. A wholesale energy market is any market within the Union on which wholesale energy products are traded - see Article 2(6) REMIT.

---

<sup>3</sup> Note that contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products (as long as the customer's consumption capacity is below 600 GWh/a, see Article 2(4)(5) REMIT).

- **Insider trading and inside information:** REMIT defines inside information as information of a precise nature which has not been made public and 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 (Article 2(1) REMIT).

Insider trading is understood as (a) using inside information by buying / selling (or trying to do so) for one's own account (or for the account of a third party) directly or indirectly wholesale energy products to which that information relates; (b) disclosing inside information to other persons unless done in the normal course of one's employment; or (c) recommending or inducing another person on the basis of inside information to buy / sell relating wholesale energy products (Article 3(1) REMIT).

- **Market manipulation:** Market manipulation and the attempt to manipulate markets are defined in full detail in Article 2(2) REMIT and Article 2(3) REMIT respectively. These definitions especially include (a) entering into transactions or issuing orders to trade in wholesale energy products which give (or are likely to give) false or misleading signals as to the supply of, demand for or price of wholesale energy products; (b) securing the price of a wholesale energy product at an artificial level; and (c) disseminating information through the media or by any other means which gives or is likely to give false or misleading signals as regards the supply of, demand for or price of wholesale energy products.
- **Organised market place (OMP) (Article 2(4) REMIT implementing acts):** This especially comprises multilateral systems which bring together (or facilitate the bringing together) of multiple third party buying and selling interest in wholesale energy products in a way that results in a contract. Typical examples are exchanges, brokers and other PPATs.

The above paragraphs summarise the major concepts introduced by REMIT into energy regulation. It requires significant effort to understand the practical implications of the above definitions. For a first discussion we refer to ACER's Guidance on REMIT.<sup>4</sup>

#### 4. Impact of REMIT on stakeholders

REMIT defines a comprehensive market monitoring framework and imposes several obligations on stakeholders in the energy market. The following section provides an overview of the impact of these obligations and how to comply with them.

##### 4.1. Obligation to register

The obligation to register applies to any market participant as defined in Article 2(7) REMIT who enters into wholesale energy transactions, including orders to trade, which are required to be reported to ACER in accordance with Article 8(1) REMIT. ACER currently considers at least the following persons to be market participants under REMIT if they enter into transactions, including orders to trade, on one or more wholesale energy markets:<sup>5</sup>

- **Energy trading companies** in the meaning of "electricity undertakings" pursuant to Article 2(35) Directive 2009/72/EC, and in the meaning of "natural gas undertakings" pursuant to Article 2(1) Directive 2009/73/EC;
- **Producers of electricity or natural gas** in the meaning of Article 2(2) Directive 2009/72/EC and Article 2(1) Directive 2009/73/EC, including producers supplying their production to their in-house trading unit or energy trading company;
- **Shippers of natural gas;**
- **Balance responsible entities;**
- **Wholesale customers** in the meaning of Article 2(8) Directive 2009/72/EC and Article 2(29) Directive 2009/73/EC;

---

<sup>4</sup> See (ACER, 2016a)

<sup>5</sup> See (ACER, 2016a)

- **Final customers** in the meaning of Article 2(9) Directive 2009/72/EC and Article 2(27) Directive 2009/73/EC, acting as one single economic entity, that have a consumption capacity of 600 GWh or more per year of gas or electricity;
- **Transmission system operators (TSOs)** in the meaning of Article 2(4) Directive 2009/72/EC and Directive 2009/73/EC;
- **Storage system operators (SSOs)** in the meaning of Article 2(10) Directive 2009/73/EC;
- **LNG system operators (LSOs)** in the meaning of Article 2(12) Directive 2009/73/EC; and
- **Investment firms** in the meaning of Article 4(1)(1), MiFID.

All market participants dealing in European wholesale energy products which have to be reported to ACER under Article 8(1) REMIT are required to register with their respective NRA in order to receive an “ACER Code”. This code is a unique identifier used to identify a market participant during all reporting proceedings under REMIT.<sup>6</sup> It also allows for effective tracing of suspicious trading behaviour in the market.

When setting up registration, NRAs can either use online access to the Central European Register of Energy Market Participants (CEREMP) provided by ACER or develop a proprietary tool themselves, as it is the case in Austria.

The information which a market participant must provide during the registration process is defined in ACER Decision No 01/2012. It comprises not only information and supporting documentation regarding the company, its structure and the associated natural persons, but also information regarding ownership structures and ultimate beneficiaries. If a market participant decides to delegate its ACER reporting to a third party, all relevant information regarding this reporting party must also be notified through the registration system. Moreover, market participants are obliged to update their registration data promptly whenever a change occurs.

Article 9(4) REMIT also provides that market participants must submit the registration data before they can enter into a transaction which has to be reported to ACER. This means that market participants can only become active on the wholesale energy market after registering with their NRA. Two concrete deadlines were defined for the registration process. In a first phase, starting on 7 October 2015, only market participants executing “standard contracts” had to register. Since the second phase started on 7 April 2016, also market participants only trading in “non-standard contracts” have had to register. The next section discusses how to differentiate between these two types of contracts.

#### 4.2. Reporting obligations and reporting timelines for wholesale energy products

Article 8(1) REMIT obliges market participants active on the wholesale energy market to report transactions, including orders to trade, to ACER. This data includes information such as the parties involved in the transaction, the price and quantity of the contract, the delivery zone and lifecycle information (such as if the contract is new or just modified).<sup>7</sup> The reporting obligations cover a wide range, from very short-term products such as intraday or within-day contracts to long-term products such as options, futures, swaps and other derivatives relating to electricity or natural gas. Also transportation contracts are covered by the obligations.<sup>8</sup>

In order to ensure a high level of data quality and to limit the number reporting parties, ACER has defined the concept of “Registered Reporting Mechanisms” (RRMs). These are market participants and other stakeholders such as OMPs or TSOs which have undergone a pre-qualification process by ACER in order to be allowed to send REMIT data to the Agency. Market participants that have to report data can either become an RRM themselves or enter into a contractual relationship with an already existing RRM. While, in theory, each market participant may apply to become an RRM, there are relatively few compared to the total number of registered market participants.

A further important differentiation under REMIT, in particular in combination with the applicable data reporting timelines, relates to the types of contracts. The notion of “standard contracts” comprises all wholesale energy products admitted to trading on an OMP.<sup>9</sup> The details of such contracts are

<sup>6</sup> See Article 10(2) of the REMIT implementing acts.

<sup>7</sup> The complete set of fields can be found in the annex of the REMIT implementing acts.

<sup>8</sup> A comprehensive enumeration of the contracts covered can be found in Article 3 of the REMIT implementing acts.

<sup>9</sup> In order to facilitate reporting, ACER maintains a public list of standard contracts and updates this list in a timely manner.

reportable one day after execution. The notion of “non-standard contracts” encompasses all wholesale energy products which are not standard contracts. The details of this type of contracts are reportable no later than 30 days after they have been concluded. In addition to these two main types of reportable transactions, market participants may on an ad-hoc basis also be requested to report further information such as intragroup contracts or contracts for balancing services to ACER.

Market participants are responsible for ensuring the timeliness, completeness and accuracy of the data submitted to ACER and, where necessary, to the NRA. This obligation cannot be delegated. However, if a participant chooses to use a third party for submitting order and transaction data, that participant would not be liable for failure to comply with the reporting obligations if such failure can be clearly attributed to the third party reporting entity.

#### **4.3. Reporting obligation and reporting timelines for inside information**

A further obligation under REMIT concerns the publication of inside information. REMIT imposes the obligation to publish such information – thus making it public information and ensuring that no participant or group of participants can profit from information asymmetries. Therewith it complements the transparency obligations already defined in Regulation (EC) 714/2009, Regulation (EC) 715/2009 and Regulation (EU) 543/2013 with a special focus on short-term information relevant for the wholesale energy markets.

Market participants are required to publish inside information in an effective and timely manner.<sup>10</sup> According to ACER, “effective publication” means that the information is published on a platform dedicated to such information and on the company’s own website. Should a dedicated platform not yet exist, publication on the company website alone suffices.<sup>11</sup>

As regards the notion of “timely” disclosure, ACER states that inside information has to be published as soon as possible but at the latest within one hour if not otherwise specified in applicable rules and regulations. In any case, inside information has to be published before trading in wholesale energy products to which the information relates or before recommending to another person to trade in wholesale energy products to which the information relates (ACER, 2016a).

#### **4.4. Reporting obligations and reporting timelines for PPATs**

According to Article 15 REMIT any PPAT is required to inform, without delay, the relevant NRA if they have reasonable suspicions that either market manipulation or insider trading has occurred. For this purpose, they are required to set up and maintain suitable surveillance methodologies. ACER currently considers two set-ups as best practice: independent surveillance teams in the case of energy exchanges and compliance officers in the case of brokers. In case of a suspected breach of REMIT, PPATs may either use the specially designed notification platform provided by ACER to inform the regulatory authorities or they can inform the responsible NRA directly.

#### **4.5. Consequences of REMIT obligations**

As can be seen from the above, REMIT considerably impacts stakeholders that are active on the European wholesale energy market. In particular, it translates into:

- Organisational changes (implementation or adjustment of compliance regimes, changes in organisational and IT processes, etc.);
- Implementation costs (additional staff, IT systems, consultancy, etc.);
- Etc.

This holds for both market participants, which have to comply with the Regulation, and regulatory authorities, which have to monitor compliance. However, both sides also benefit from the implementation of REMIT as it provides market participants with more transparent and trustworthy wholesale energy markets and allows regulatory authorities to gain deeper insight into trading activities on the energy market. Learning effects can be expected contribute to a further increase in the efficiency of the reporting and monitoring processes defined. In the longer term, this should lead to

---

<sup>10</sup> Rules for an exceptional delay in the publication of such information can be found in Article 4(2) REMIT.

<sup>11</sup> See (ACER, 2016a), page 42.



an efficient regulatory framework fostering liquid wholesale energy markets, which are a prerequisite for competitive energy prices.

## 5. National implementation of REMIT in Austria

This section provides an overview of the national implementation of REMIT in Austria. Legal aspects, major deliverables of the project and experience gained so far are described.

### 5.1. National legislation

As a European regulation, REMIT is directly applicable at national level. Even so, certain areas such as the investigatory and enforcement powers or penalties for infringements have to be transposed into national law. In case of the Austrian legislation, the E-Control Act, the Electricity Act and the Natural Gas Act had to be amended in order to ensure full conformity with the Regulation. The most relevant changes in these national acts and a national ordinance on REMIT are described in the following subsections.

#### 5.1.1. E-Control Act

The E-Control Act defines the rights and duties of E-Control as responsible NRA for the Austrian energy market. It was amended in order to transpose the investigatory and enforcement powers defined in Article 13 REMIT into national law. Now, in addition to being responsible for unbundling and general competition aspects in the energy sector, E-Control has the duty to supervise the wholesale energy market at national level and to monitor compliance with all duties and prohibitions imposed by REMIT.<sup>12</sup> Section 25a of the E-Control Act entitles the authority to collect evidence of abusive behaviour on the wholesale energy market via several means – for example, E-Control has access to any relevant documents, can carry out on-site investigations and can demand access to information necessary for investigation procedures. This can include asking all representatives and employees of an undertaking or group of undertakings to explain facts and circumstances which are relevant to an investigation, suggesting that the market participant's property be seized or requesting a temporary prohibition of business activity for the duration of the proceedings. The same section also defines that exchanges and any other PPATs must provide E-Control with all information it needs to fulfil its responsibilities and support it in executing investigations. Section 25a(2) of the E-Control Act also gives the authority the power to issue an ordinance at national level by which it can request and collect data and information it needs to fulfil the responsibilities defined in REMIT. Based on this legal provision, E-Control issued the Ordinance on Energy Wholesale Data Collection, which is described in more detail in section 5.1.3.

#### 5.1.2. Electricity Act and Natural Gas Act

The Electricity Act and the Natural Gas Act are the decisive legislative texts for the electricity and gas markets in Austria. They contain provisions for all steps of the supply chain and for the organisation of the sectors, regulate system charges and lay down the rights and obligations of undertakings active in the energy market. The Acts also comprise sanctions for non-compliance with market rules and for REMIT breaches. Depending on the concrete offence and its severity, different penalties are defined for market manipulation and insider trading, but also for non-disclosure of inside information, non-compliance with reporting obligations and for not registering as a market participant with the relevant NRA.

**Market manipulation:** The Austrian Electricity Act and Natural Gas Act define market manipulation and attempted market manipulation according to REMIT as an administrative offence. Depending on the concrete case, offences can be punished with fines of up to EUR 150,000.

**Insider trading:** The Electricity Act and the Natural Gas Act foresee different sanctions for insider trading depending on the person acting in breach of Article 3 REMIT and depending on whether this is done with or without an intent to generate a pecuniary advantage for themselves or a third party. If insider trading is executed by

---

<sup>12</sup> See section 24(1)(4) E-Control Act

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

this is generally considered as a criminal offence. If these persons execute an insider trade with the intent to generate a pecuniary advantage for themselves or a third party this can be sanctioned with a prison sentence of up to 3 years. An execution without such intent can be punished with a prison sentence up to 6 months or 360 daily rates.

If an insider trade is not executed by the persons listed above but by

- other persons who know, or ought to know, that the information they possess constitutes inside information;

this breach of Article 3 REMIT is considered as an administrative offence with fines up to EUR 50,000 in case the insider trade is executed without the intent to generate a pecuniary advantage for themselves or a third party and up EUR 150,000 if it is executed with such an intent. Whereas administrative offences are followed up by the responsible district court, criminal offences are dealt with by the responsible state prosecutor.

Other breaches such as non-disclosure of REMIT inside information or non-compliance with reporting and registration obligations constitute administrative offences and are followed up by the responsible district court.

Table 1 provides an overview of all relevant REMIT breaches listed in the Austrian Electricity Act and Natural Gas Act and the corresponding sanctions.

Type of REMIT breach	Type of offence	Electricity Act reference	Natural Gas Act reference	Penalty
Market manipulation and attempted market manipulation	Administrative	99(4)(1)	159(4)(1)	≤ EUR 150,000
Insider trading of persons according to Art. 3(2)(e) REMIT without intent	Administrative	99(1)(16)	159(1)(17)	≤ EUR 50,000
Insider trading of persons according to Art. 3(2)(e) REMIT with intent	Administrative	99(4)(2)	159(4)(2)	≤ EUR 150,000
Insider trading of persons according to Art. 3(2)(a) to (d) REMIT without intent	Criminal	108a(2)	168a(2)	≤ 6 months imprisonment or 360 daily rates
Insider trading of persons according to Art. 3(2)(a) to (d) REMIT with intent	Criminal	108a(1)	168a(1)	≤ 3 years imprisonment
Non or incorrect disclosure of REMIT inside information	Administrative	99(1)(7) to (9)	159(1)(8) to (10)	≤ EUR 50,000
Not informing E-Control about a disclosure of REMIT inside information	Administrative	99(5)(1)	159(5)(1)	≤ EUR 10,000
Not complying with REMIT reporting obligations	Administrative	99(1)(10) to (11), 99(1)(15)	159(1)(11) to (12), 159(1)(16)	≤ EUR 50,000
Not complying with reporting obligations under the Ord. on Energy Wholesale Data Collection	Administrative	99(5)(2)	159(5)(2)	≤ EUR 10,000
Not cooperating with E-Control	Administrative	99(5)(3)	159(5)(3)	≤ EUR 10,000
Not registering as market participant and not updating registration data	Administrative	99(1)(12) to (14)	159(1)(13) to (15)	≤ EUR 50,000

**Table 1: REMIT sanctions in Austria**

### 5.1.3. National ordinance on the collection of wholesale energy market data

In order to fulfil the responsibilities defined in REMIT and to supervise trading of wholesale energy products at national level section 25a(2) E-Control Act entitles E-Control to stipulate reporting obligations at national level. By means of an ordinance E-Control can define the parties to which the reporting obligations apply as well as the frequency, scope and format of reporting. This paragraph also represents the legal foundation for the Ordinance on Energy Wholesale Data Collection issued by E-Control in January 2015 with the intention to minimise the risk of delayed data reporting under REMIT. The Ordinance helped E-Control ensure conformity with the monitoring duties defined in section 24(1)(4) E-Control Act and allowed market participants to gain experience with data reporting under REMIT. It entered into force six months before the start of reporting obligations outlined in REMIT. In order to minimise the organisational burden for market participants, the reporting obligations, data types and formats were largely aligned with REMIT and its implementing acts. Additional details on data reporting at national level were elaborated together with stakeholders in the course of common workshops. Since data reporting to ACER started in October 2015 for standard contracts and in April 2016 for non-standard contracts, large parts of the reporting obligations defined in the Ordinance on Energy Wholesale Data Collection are fulfilled by virtue of reporting to ACER and only limited additional data need to be sent to E-Control. Even so, the Ordinance represents an important basis for data collection and monitoring at national level as it complements REMIT in areas of significant relevance for the Austrian wholesale energy market (for example the electricity balancing market).

## 5.2. National data collection and analysis

Besides the legal aspects described in the section above, national implementation of REMIT in Austria strongly focuses on providing E-Control with the necessary tools to collect and analyse REMIT data. The following subsections lay out major deliverables of the REMIT implementation.

### 5.2.1. Non-Standardised Contract Reporting Tool (NSCR)

Section 4(5) of the Ordinance on Energy Wholesale Data Collection requires market participants or delegated parties to report non-standard contracts of wholesale energy products to E-Control unless they are reported directly to ACER. To support market participants in fulfilling this obligation and to ensure an efficient reporting process, E-Control cooperated with industry experts to develop the NSCR. It allowed market participants to enter the required information of their non-standard contracts via a secure online tool operated by E-Control. All entered data was automatically fed into and analysed by E-Control's market surveillance software. Until the start of non-standard contract reporting directly to ACER on 7 April 2016 more than 1,200 contract messages<sup>13</sup> were entered via the NSCR, allowing E-Control to effectively monitor trading in these specific products.

### 5.2.2. National Registration System (NRS)

Article 9 of REMIT requires market participants entering into transactions which have to be reported to ACER to register with the NRA in the Member State in which they are established, resident or active. In order to ensure an efficient registration process E-Control has developed the NRS. This tool allows market participants to enter and update their registration data<sup>14</sup> via a secure online platform. E-Control also uses the tool to manage the internal data verification process, to upload the registration data to ACER's CEREMP<sup>15</sup> and to distribute ACER codes to market participants. So far, E-Control has guided more than 250 companies through the registration process and answered more than 100 requests on this matter via a specific REMIT registration helpdesk.

---

<sup>13</sup> A complete contract report consists of two messages, one issued by the seller and one issued by the buyer of the contract. In case of cross-border contracts under the Ordinance on Energy Wholesale Data Collection, there are instances of one-sided reporting because the Ordinance only applies to Austrian market participants.

<sup>14</sup> The concrete information which market participants are obliged to enter in the NRS is defined by ACER in its ACER decision n° 01/2012.

<sup>15</sup> CEREMP is published by ACER under the following link: <https://www.acer-remit.eu/portal/ceremp>

### 5.2.3. Whistle-blower platform

Intelligence from the market itself is an important source of information for market monitoring. In a significant number of cases in the past information from whistle blowers built the starting point for further investigations. Therefore, E-Control decided to provide market participants with a secure communication platform which allows a person with knowledge regarding abusive behaviour to contact the authority directly and, if so desired, in an anonymous way. The platform allows whistle blowers to inform the NRA about the details of their suspicion and to upload files to support their view. Communication takes place via a secured post box on the platform so that E-Control can inform the reporting person about the status of the potential case and clarify remaining questions. The platform is directly accessible via the E-Control homepage<sup>16</sup> and can be used by every person possessing knowledge about anti-competitive behaviour.

### 5.2.4. Data collection and market surveillance software

An essential source of information to monitor wholesale energy markets is of course trading and fundamental data. These data, in combination with published inside information, can provide very detailed insight into the trading activities on the market and potentially abusive behaviour. However, due to the mass of information collected (see Figure 2), data analysis must be very well structured and highly efficient.

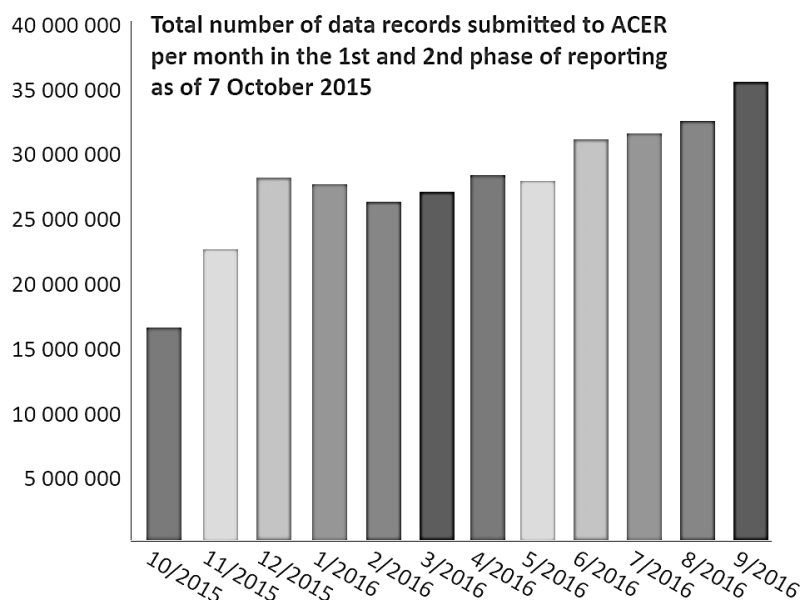


Figure 2: Total number of data records submitted to ACER per month (ACER, 2016)

In order to ensure this, E-Control has procured the market surveillance software Scila. This specific monitoring tool allows for very efficient data screening and is also used by international exchanges such as the New York Stock Exchange or the Deutsche Börse to monitor trading activities on their market places. E-Control already gained first experience with Scila in an award-winning pilot project<sup>17</sup> in 2011, during which the software demonstrated its usefulness for monitoring wholesale energy markets. Based on this experience, the software has been further customised and developed over the last three years.

<sup>16</sup> See <https://www.e-control.at/whistleblower-plattform>

<sup>17</sup> CEER and E-Control received the European Energy Transparency Award (ETA) 2011 for the pilot project "Energy Trade Data Reporting Scheme". CEER and E-Control demonstrated within a period of only six months that the establishment of effective European monitoring of wholesale energy trading based on largely electronic data collection is feasible. It served as a prototype for the implementation of REMIT and hence contributed to convince EU legislators of the feasibility and usefulness of more systematic and sophisticated EU-wide market monitoring. The ETA is awarded by the Florence School of Regulation and recognises a company or institution for their particular contribution to the transparency of energy markets in Europe.

Figure 3 below provides an overview of the data collection and market surveillance system used by E-Control. In a first step ACER collects REMIT information via RRM. The data is stored in ACER's data base and forwarded to the relevant NRAs. E-Control enriches the information with further data collected at national level as well as publically available data. This data set is subsequently analysed by E-Control's market surveillance system. In case of unusual trading behaviour alerts are produced and further analysed by E-Control's REMIT team. In case the suspicions substantiate further, investigations are started. Analysis by the market surveillance system only constitutes part of the market monitoring process. The more comprehensive framework and its escalation levels are described in the following section.

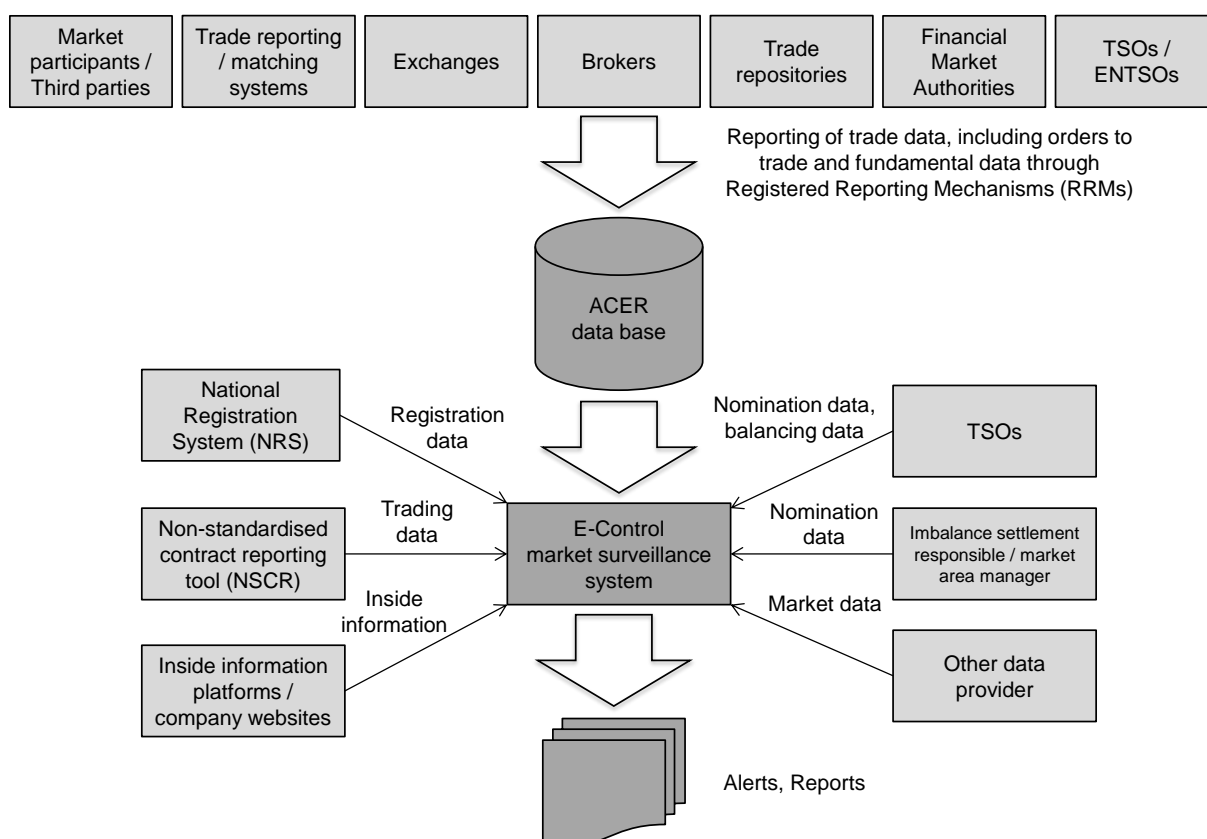


Figure 3: Schematic of E-Control's data collection and market surveillance system

### 5.3. Organisational aspects of market monitoring

The legal implementation of REMIT is the basis for market monitoring at national level. Having useful technical tools available is another important aspect for effective market monitoring. As a third element, in order to follow up on identified suspicious trading activities in a proper way, organisational processes have to be defined and implemented. The following section provides an overview of E-Control's monitoring processes, starting with how suspicious trading behaviour is detected and ending with handing over a case to the law enforcement authorities.

#### 5.3.1. E-Control's market monitoring processes and procedures

E-Control's market monitoring processes are designed to fulfil several purposes. The focus is on internal work flows in order to ensure, for example, that potential cases are unequivocally assigned, that evidence is collected in line with national and European law and that clear decision-making processes are in place. Regular audits and management reviews are conducted to ensure that the processes are continuously improved. The outcomes are taken into account in regular updates of the monitoring processes.

Figure 4 provides an overview of E-Control's current monitoring procedures. Suspicious trading activities can be identified on the basis of different sources of information. This includes receiving

information directly via ACER, which also closely monitors the markets at a pan-European level, or getting information through E-Control's own market surveillance system, E-Control experts working closely together with the industry, through the whistle-blower platform or via PPATs, which are obliged to inform the NRAs in case of suspicions. The E-Control REMIT team regularly checks whether new information is available from these sources and verifies that information. If first suspicions substantiate, a potential case enters the pre-investigation phase and gets assigned to a case handler. This expert supervises the further scrutiny of all available facts in order to confirm or discard the allegation. This might already mean contacting other NRAs or PPATs to clarify open questions or to request further information. If reasonable grounds substantiate during this pre-investigation phase, the potential case is brought to the attention of E-Control's Executive Board, which decides whether or not to initiate a formal REMIT investigation. If not before, ACER and the other involved authorities are notified of the suspicious behaviour identified. In case of potential breaches with cross-border effects, ACER takes on a coordinating role for the further scrutiny of the allegation. However, execution stays with the NRAs, who are empowered to collect further evidence at national level. According to the current monitoring process E-Control collects further evidence and prepares a final internal report for the Executive Board. Based on this information and all other available facts, the Board decides if there is sufficient evidence for a breach of REMIT and the case should be forwarded to the state prosecutor or district court. From this point on, the law enforcement authorities take the lead of the case at national level. E-Control supports the authorities by providing expert knowledge and further information.

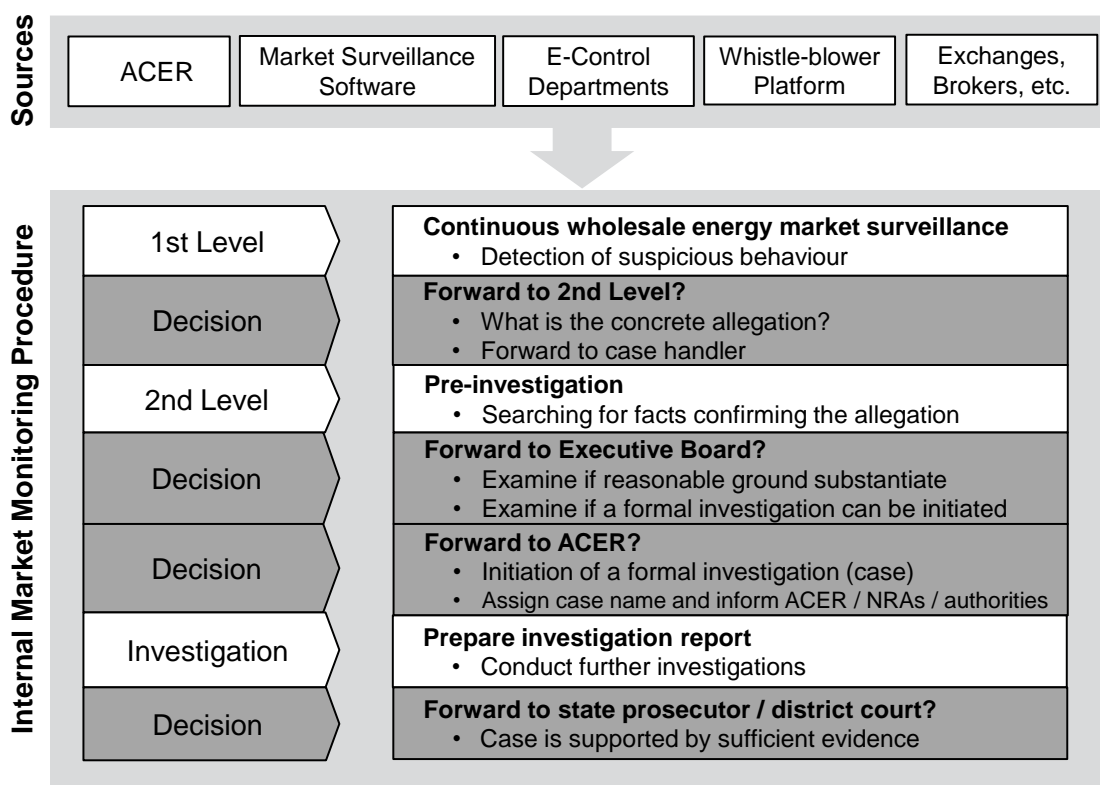
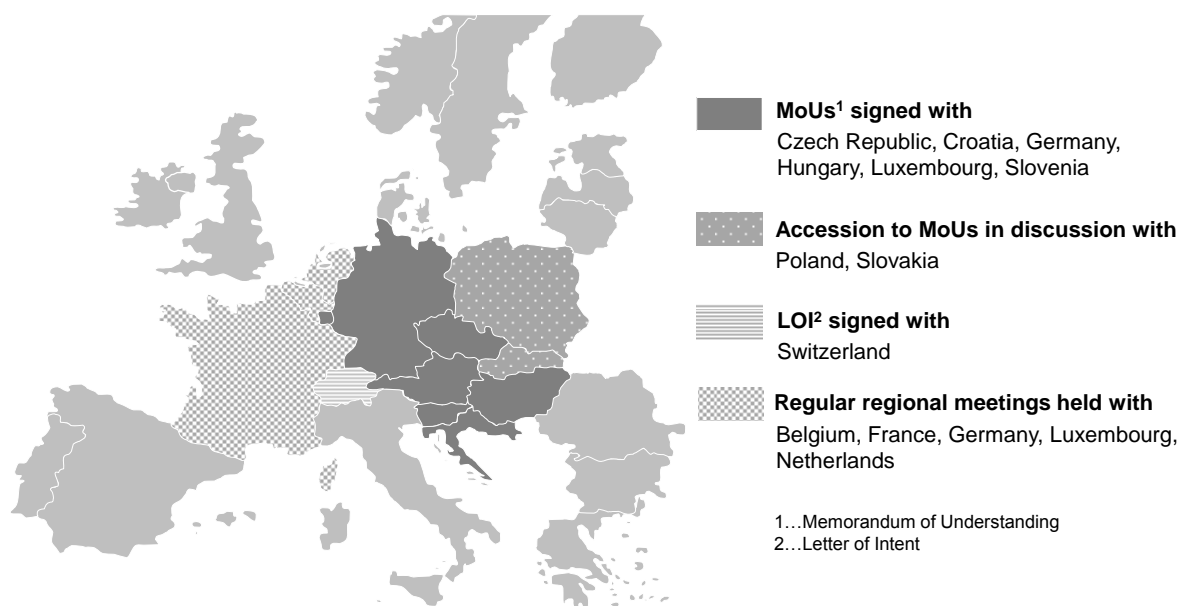


Figure 4: E-Control's market monitoring procedure (Mayer, 2016)

### 5.3.2. Cooperation at national, regional and European level

As European wholesale energy markets are closely interlinked, abusive behaviour may likely affect more than one Member State and different kinds of products. In order to account for this circumstance close cooperation between relevant authorities at national, regional and European level is necessary. Based on this consideration, E-Control already initiated first meetings with relevant authorities in 2012. To formalise the rules and procedures for such cooperation, memorandums of understanding (MoUs) were signed with the financial market authority in Austria and with NRAs from neighbouring Member States and ACER (see Figure 5). The cooperation agreements comprise an exchange of knowledge and experience, exchange of information, close cooperation on market monitoring and, where possible, also cooperation on sanctioning REMIT breaches. The practical implementation of these

agreements contributes to a comprehensive understanding of the different energy markets, provides for a smooth flow of information and ensures an efficient market monitoring regime at pan-European level. E-Control's aim is to intensify this cooperation by various means such as the exchange of experts with other NRAs or the establishment of regional competence centres for market monitoring.



**Figure 5: E-Control's REMIT cooperation at regional level**

## 6. Outlook and conclusion

This paper has shown REMIT to represent a tailor-made monitoring framework for European wholesale energy markets embedded in a comprehensive regulatory regime. It establishes a multi-layer monitoring approach by not only giving ACER and NRAs the power to collect and analyse data but also obliging PPATs to monitor trading activities and inform NRAs about any suspicious trading behaviour they identify. Supplementary tools such as whistle-blower platforms ensure that also intelligence from the industry can contribute to effective monitoring. Last but not least, also financial market authorities monitor trading in energy derivatives.

It has also been shown that the implementation of REMIT has a significant impact on the stakeholders active in the wholesale energy market. While market participants have to comply with additional reporting obligations under REMIT, they also benefit from increased market transparency and assurance that wholesale prices are not biased by abusive behaviour of other trading companies. This should lead to even more trustworthy and liquid energy markets providing competitive prices for end-consumers.

For ACER and NRAs, REMIT allows gaining deeper insight into energy markets. Whereas analysis in the past mainly focused on general market outcomes, now even individual transactions of market participants can be examined. This gives NRAs the possibility to verify the effects of certain market rules, to optimise the market design and to further increase market efficiency.

E-Control's future activities in this area will focus on the national implementation of REMIT and on strengthening the cooperation with other authorities, PPATs and market participants at national, regional and European level. Internal market monitoring procedures will be further improved and aligned with neighbouring NRAs and ACER to ensure a smooth flow of information. Extensive exchange of knowledge and experience between NRAs has already been initiated and will continue in the future.

The implementation of an effective market monitoring regime under REMIT does not represent a one-off task but is a dynamic process. General market developments have to be considered, just as certain constellations or developments at market participant or product level must be taken into account. Market monitoring is a challenging task. ACER and NRAs will need to continue to invest great efforts to ensure sufficient transparency and fair conditions on the European wholesale energy markets.

## 7. Literature

13. Verordnung des Vorstands der E-Control über die Meldepflichten zur Durchführung der Überwachung des Handels mit Energiegroßhandelsprodukten auf nationaler Ebene (Energiegroßhandelsdatenverordnung – EGHD-VO).
- ACER. (2016). ACER REMIT Quarterly, Issue No. 6 / Q2-Q3 2016. Retrieved at 19. January 2017 from ACER website: <https://www.acer-remit.eu/portal/remit-quarterly-doc>
- ACER. (2016a). Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity - 4th Edition. Retrieved at 17. January 2017 from ACER website: <https://www.acer-remit.eu/portal/document-download?documentId=b008dn515gy>
- ACER Decision n° 01/2012. Retrieved from <http://www.cer.ie/docs/001008/ACER%20Decision%2001-2012.pdf> abgerufen
- COMMISSION IMPLEMENTING REGULATION (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and tr. (Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse)).
- DIRECTIVE 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on markets in financial instruments.
- DIRECTIVE 2014/57/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on criminal sanctions for market abuse (market abuse directive).
- DIRECTIVE 2014/65/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU.
- Mayer, J. (April 2016). Erste Erfahrungen mit der nationalen Marktüberwachung. EPCON 2016 REMIT Phase 2 & MiFID II.
- Overall legal text of the Elektrizitätswirtschafts- und -organisationsgesetz (Electricity Act) 2010 as amended on 22/10/2013. Retrieved from <https://www.e-control.at/documents/20903/-/53021623-f722-4e47-b52c-aa8c9ac03b77>
- Overall legal text of the Energie-Control-Gesetz (E-Control Act) as amended on 25/03/2014. Retrieved from [https://www.e-control.at/documents/20903/443907/E-Control-Gesetz\\_en.pdf/8f79973b-24ac-416b-b5f0-34255bce8ddc](https://www.e-control.at/documents/20903/443907/E-Control-Gesetz_en.pdf/8f79973b-24ac-416b-b5f0-34255bce8ddc)
- Overall legal text of the Gaswirtschaftsgesetz (Natural Gas Act) 2011 as amended on 18/09/2013 . (Retrieved from <https://www.e-control.at/documents/20903/-/22a8972f-c195-466b-b97f-746e72ebd4b1>
- REGULATION (EU) 2016/1011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds.
- REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 25 October 2011 on wholesale energy market integrity and transparency.
- REGULATION (EU) No 596/2014 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 on market abuse (market abuse regulation).
- REGULATION (EU) No 648/2012 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 4 July 2012 on OTC derivatives, central counterparties and trade repositories.