

# ACER's annual report on its activities under REMIT in 2012





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## Foreword by the ACER Director



I am pleased to present this first Report on the activities of the Agency for the Cooperation of Energy Regulators in implementing the new Regulation on wholesale energy market integrity and transparency (REMIT).

REMIT entered into force on 28 December 2011 and therefore this Report focuses on the Agency's activities in 2012, but also extends to the most relevant developments during the initial months of 2013. Next year's report will provide a more detailed and complete account of the Agency's activities in 2013.

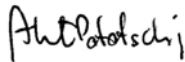
REMIT introduces a sector-specific wholesale energy market monitoring framework to detect and prevent market abuse and to ensure market integrity and transparency for the benefit of European energy consumers and citizens. Such a framework is unprecedented in the energy sector, and not only in Europe, for its geographical scope – a multijurisdictional coverage – and complexity – requiring the reporting of individual transactions. Therefore its implementation poses a formidable challenge and, since mid-2011, the Agency has been working in developing the monitoring methodologies and procedures, and deploying the necessary IT infrastructure to support the new monitoring framework. This work, which is described in this Report, has involved National Regulatory Authorities (NRAs) – which will be responsible for investigations and enforcement and may also monitor energy markets at national levels – and a large number of energy market participants and other stakeholders. I am very grateful to all of them for their constructive contribution to this process.

I expect the deployment of the IT infrastructure to be completed by the end of 2014. However, the exact date from which individual transactions will have to be reported depends on the timing of the adoption of the implementing acts by the European Commission.

This Report also illustrates the results of the monitoring activities performed by the Agency over the last year. A few cases of suspected breaches of the information disclosure obligations and of the market abuse prohibitions under REMIT have been brought to the attention of the Agency by market participants and persons professionally arranging transactions, even before the new monitoring framework is in place. The Agency has assessed these cases in close cooperation with the involved NRAs. These cases have provided a test ground for the methodologies and procedures to be used in the future, even though their assessment has been hampered by the lack of a systematic collection of trade and fundamental data, something which will become available once the IT infrastructure is in place and the reporting obligation in force. At that point, the Agency will have a full picture of wholesale energy markets developments and market participants trading behaviour across the European Union.

However the way in which the monitoring of wholesale energy markets will be organised in the future is still unclear and will crucially depend on the human resources – in terms of expert market analysis capabilities - which will be available to the Agency. In fact, while according to REMIT, the Agency “is best placed to carry out such monitoring as it has both a Union-wide view of electricity and gas markets, and the necessary expertise in the operation of electricity and gas markets and systems in the Union”, the resources currently available, while sufficient to perform monitoring at the limited scale undertaken in 2012, are clearly inadequate to handle the amount of information on wholesale energy markets which the new monitoring framework will make available.

The Agency will work in 2014 to define the most efficient approach to market monitoring on the basis of the available resources. However, it would be most unfortunate if the effectiveness of wholesale energy market monitoring, which is an integral part of the goal to achieve a well-functioning internal energy market by 2014, is jeopardised by the lack of resources, especially given that, also based on the experience in the US, the benefits of market integrity and transparency are likely to be manifold larger than any resource costs involved in effective monitoring. Therefore, I am confident that the Agency will be put in a position to fulfil its mission under REMIT in the effective way that European energy consumers deserve.



Alberto Potoschnig  
ACER Director

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# 1 Introduction

## 1.1 The regulatory framework under REMIT

- 1 In December 2011, the EU adopted new stringent rules on wholesale energy trading. Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT)<sup>1</sup> introduces a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market manipulation.
- 2 REMIT introduces, for the first time, an EU-wide and sector-specific framework:
  - defining market abuse, in the form of market manipulation, attempted market manipulation and insider trading in wholesale energy markets;
  - introducing explicit prohibitions of market manipulation, attempted market manipulation and insider trading in wholesale energy markets;
  - establishing a new framework for the monitoring of wholesale energy markets through ACER at pan-European level to detect and deter market abuse;
  - defining a data collection scheme at pan-European level;
  - providing that National Regulatory Authorities (NRAs) are given enforcement and investigatory powers and that Member States establish a penalty regime for breaches at national level by 29 June 2013.

■ Figure 1: Regulatory architecture under REMIT



<sup>1</sup> OJ L 326, 8.12.2011, p. 1.

## 1.2 The Agency's mandate under REMIT

- 3 Regulation (EC) No 713/2009 (the ACER Regulation)<sup>2</sup> established the Agency for the Cooperation of Energy Regulators (ACER), assigning it a key role in the process of completing the Internal Energy Market (IEM) for electricity and natural gas. Further tasks for ACER are specified in the other legal acts forming the Third Legislative Package on the Liberalisation of the Energy Markets<sup>3</sup>.
- 4 The mission of the Agency, as defined in Article 1(2) of the ACER Regulation, is "to assist National Regulatory Authorities in exercising, at Union level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action". As such, the Agency was established to fill the regulatory gap which was emerging in the process of market integration at EU level, to perform effective regulatory oversight (beyond and across national borders) and to contribute towards the effective functioning of the IEM in electricity and natural gas.
- 5 REMIT, which entered into force on 28 December 2011, significantly expands the mission of the Agency by assigning new responsibilities in the area of wholesale market monitoring. Such activities are very different from the monitoring of the internal market which the Agency has been performing pursuant to Article 11 of the ACER Regulation and they require the Agency to acquire new IT infrastructure and software to collect data from market participants at EU level, as well as new market monitoring tools and specialised expertise.
- 6 Under REMIT, the Agency is responsible for:
  - establishing the centralised European Register of wholesale energy market participants (CEREMP);
  - collecting information, to be reported by market participants on transactions, including orders to trade, in wholesale energy products for delivery in the European Union, independently of where and how they are traded;
  - collecting "fundamental data" on the physical state of the energy systems (e.g. availability of generation and transport facilities);
  - performing an initial analysis and assessment of wholesale energy market transactions, including orders to trade, in the light of the state of the energy systems, to identify instances of possible market abuse (market manipulation, attempted market manipulation and insider trading), and to notify such cases to competent national authorities responsible for investigation and enforcement;
  - coordinating the investigation of suspected cases of market abuse by national competent authorities, in particular when they involve more than one jurisdiction;
  - assessing the operation and transparency of different categories of market places and ways of trading. The results of this assessment are included in this Annual report.

2 REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF>

3 See [http://ec.europa.eu/energy/gas\\_electricity/legislation/third\\_legislative\\_package\\_en.htm](http://ec.europa.eu/energy/gas_electricity/legislation/third_legislative_package_en.htm)

- 7 The activities of the Agency with respect to REMIT will be performed in two stages:
- The implementation stage, in which the Agency will put in place the IT tools and the procedures for effectively monitoring wholesale energy markets, including data exchange with NRAs and other authorities (at national and EU level) with which the Agency will cooperate. This stage started with the entry into force of REMIT on 28 December 2011. Since then, the Agency has issued three editions of the Guidance on the application of REMIT and the definitions contained in its Article 2, a document defining the Registration Format and its Recommendations to the European Commission on the records of transactions. In 2012, 2013 and 2014 the Agency has focused and will continue to focus on the development and deployment of the IT systems for registration of market participants, data collection and data sharing, and the effective monitoring of the markets in wholesale energy products. The software implementation will have to be completed within six months of the adoption by the European Commission of the implementing acts; at this time, the reporting obligation on market participants will take effect and so the full monitoring framework should be in place. As the adoption of the implementing acts is expected to take place early in 2014, the implementation stage needs to be completed by mid-2014.
  - The operational stage, in which the Agency will be responsible for actively monitoring trading activities in wholesale energy markets to detect and prevent trading based on inside information and market manipulation. This involves *inter alia* the collection of trade and fundamental data, to be reported by market participants and other reporting entities, the screening of such data, in the light of the state of the energy systems, to identify instances of possible market abuse and to notify them to national competent authorities who are responsible for investigation and enforcement. The Agency will also be responsible for coordinating investigations.
- 8 When REMIT is fully implemented, the Agency will be responsible for collecting and analysing wholesale energy market data to identify possible instances of market abuse. After an initial assessment, the Agency will notify the relevant NRAs who will then carry out investigations and take appropriate action to remedy any breach found. Penalty regimes will be put in place at national level to help prevent market manipulation and insider trading. Market monitoring under REMIT is an important new task for the Agency and market integrity and transparency is essential for well-functioning energy markets and for promoting the confidence of market participants and final consumers.



### 1.3 The Agency's reporting obligation under REMIT

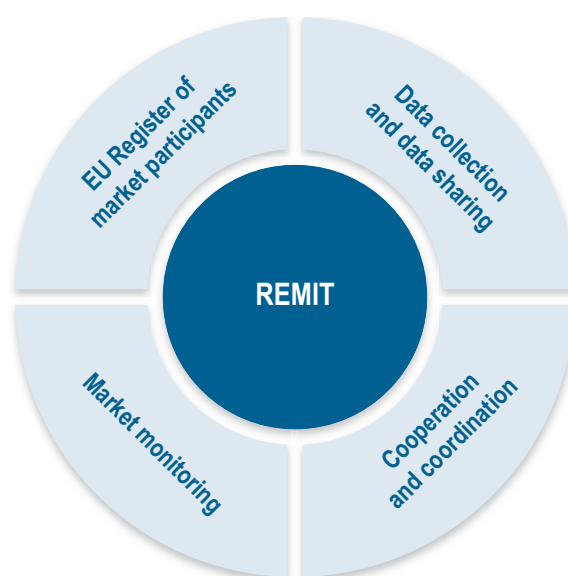
- 9 According to Article 7(3) of REMIT, the Agency shall at least on an annual basis submit a report to the Commission on its activities under REMIT and make this report publicly available. In such reports the Agency shall assess the operation and transparency of different categories of market places and ways of trading and may make recommendations to the Commission as regards market rules, standards, and procedures which could improve market integrity and the functioning of the internal market. The Agency may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency. Reports may be combined with the report referred to in Article 11(2) of the ACER Regulation. All recommendations should be made available to the European Parliament, the Council and the Commission and to the public.
- 10 This report informs the European Commission and the public on the Agency's REMIT activities during the year 2012. The Agency recognises the importance of informing the public on its REMIT activities and prepared this report with that objective in mind, in particular as not all REMIT activities of the Agency result in public actions. The report therefore provides the public with more information regarding the nature of some non-public REMIT activities.
- 11 This report includes the following chapters: Chapter 2 presents the activities of the Agency during 2012 with regards to the REMIT implementation stage. The Agency has chosen to also include in this chapter of the report the status of the implementation of REMIT at national level across the Union. In Chapter 3, the Agency's strategy for wholesale market monitoring under REMIT is described. This chapter also includes an overview of the cases of potential breaches of REMIT that the Agency was involved in during 2012, as well as an assessment of the operation and transparency of market places and other ways of trading in EU wholesale energy markets. Finally, in Chapter 4 conclusions are drawn and recommendations are given which the Agency considers to contribute to improved integrity and enhanced transparency in European wholesale energy markets.

## 2 The Agency's REMIT implementation activities in 2012

### 2.1 Introduction

<sup>12</sup> The preparatory work for implementing REMIT was a priority for the Agency in 2012. Since this is the first annual REMIT report published by the Agency, the report covers all major activities undertaken with regard to REMIT implementation during both 2011 and 2012. The activities described in this chapter are classified according to the four categories shown in Figure 2.

■ Figure 2: The Agency's core activities under REMIT



<sup>13</sup> Following the adoption of REMIT, the Agency had to plan to adapt its IT infrastructure accordingly in order to accommodate an increased number of users and the new tasks assigned to it, including gathering, reviewing and sharing data from wholesale energy markets. With the entry into force of REMIT, the Agency made a platform available through its website for the notification of delayed disclosure of inside information and for the reporting of suspicious transactions. This online platform enabled market participants and persons professionally arranging transactions to fulfil their respective obligations under REMIT in relation to both the Agency and NRAs. The Agency also had to deploy IT infrastructure capable of handling large volumes of data and specialist software for automated data analysis. As a result, the Agency undertook the following three IT procurement procedures in 2012:

- Web application development services and IT consultancy services for the implementation of the Agency's REMIT Information System (ARIS) (Tender 1 - ACER/OP/ADMIN/12/2012).
- IT infrastructure hosting services (Tender 2 - ACER/OP/ADMIN/14/2012).
- The market monitoring system for the Agency's REMIT information system (ARIS) (Tender 3 - ACER/OP/ADMIN/21/2012).

- 14 During October and November 2012, the Agency signed multiple framework contracts (ACER/OP/ADMIN/12/2012) in cascade for Web application development services for the implementation of the Agency's REMIT Information System (ARIS). These were signed with the following contractors: Lutech S.p.A. (1<sup>st</sup> contractor), Capgemini Italia S.p.A. (2<sup>nd</sup> contractor) and Intrasoft International S.A. (3<sup>rd</sup> contractor).
- 15 In December 2012, the Agency signed a framework contract (ACER/OP/ADMIN/21/2012) with OMX Technologies to deliver its SMARTS Integrity market surveillance system to the Agency for the monitoring of European wholesale energy markets under REMIT. The SMARTS Integrity surveillance system will provide the Agency with a surveillance platform to automatically screen trade and fundamental data for detecting insider trading, market manipulation and attempted market manipulation across European wholesale energy markets. The solution will allow analysis of power and gas trading across the EU and provide the Agency with a consolidated view on a pan-European basis.
- 16 Tender 1 Lot 2 on IT Consultancy was not awarded. A framework contract (ACER/OP/ADMIN/14/2012) with CSI Piemonte was signed on 31 January 2013. It was subsequently terminated early, as it did not cover all the services that the Agency has determined are essential for hosting the infrastructure required for the implementation of REMIT. Tendering procedures for IT Consultancy and for Hosting Services were relaunched in 2013.

## 2.2 Registration of market participants

<sup>17</sup> According to Article 9 of REMIT, market participants entering into transactions which are required to be reported to the Agency under REMIT shall register with the NRA in the country in which they are established or active. A market participant shall register only with one NRA. Member States shall not require a market participant already registered in another Member State to register again. The registration of market participants is without prejudice to obligations to comply with applicable trading and balancing rules. No later than three months after the date on which the Commission adopts the implementing acts, NRAs shall establish national registers allowing market participants to start registering. Following the registration of market participants, NRAs shall transmit the information in their national registers to the Agency, which will establish a European register of market participants in order to enhance the overall transparency and integrity of wholesale energy markets. In this section, the Agency's activities relating to the registration of market participants are described.

### 2.2.1 Adoption of the Registration format

<sup>18</sup> According to Article 9(3) of REMIT, the Agency shall, in cooperation with NRAs, determine and publish, by 29 June 2012, the format through which NRAs transmit the information on market participants to the Agency. The registration format is necessary to enable NRAs to transmit the information in their national registers to the Agency.

<sup>19</sup> On 26 June 2012, the Agency adopted a decision determining the registration format to be used for the establishment of the future European register of market participants<sup>4</sup>. NRAs were closely involved in the preparation of the registration format, *inter alia* through the Agency's Board of Regulators (BoR).

<sup>20</sup> Stakeholders were extensively consulted during the preparation of the registration format. All interested parties were invited to provide comments on a Public Consultation Paper published on 18 April 2012 and to attend a public workshop, held on 3 May 2012, during which the Consultation Paper was presented<sup>5</sup>.

<sup>21</sup> In developing the registration format, the Agency sought to develop systems and solutions with minimum impact on existing registration and reporting systems and processes. In doing this, the Agency was driven by the following criteria:

- minimising the burden, including implementation costs, for all interested parties;
- ensuring the accuracy of the information provided whilst simultaneously keeping the registration process as smooth, light and fast as possible; and
- ensuring the uniqueness, at European level and not only at national level, of the identifier which the Agency will issue to market participants at the time of registration, in order to guarantee full consistency between the European register and national registers.

<sup>4</sup> ACER Decision no 01/2012 relating to the registration format pursuant to Article 9(3) of Regulation (EU) No 1227/2011.

<sup>5</sup> REMIT Registration Format pursuant to Article 9(3) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (REMIT) – Public Consultation Paper.

### 2.2.2 Preparatory study

- 22 At the end of 2011, the Agency commissioned to CSI Piemonte, a preparatory study on the technical implementation of a Central European Registry of Energy Market Participants (CEREMP). The final report was presented to the Agency in April 2012 and became a basis for the procurement of the software development of the CEREMP system. The preparatory study provided a high level description of the market participant registration process and presented the general features of CEREMP, including the role of the different parties involved in CEREMP operations and the relations between the CEREMP system and the national registration systems. It presented the information collected through CEREMP, including the structure of the code that will be generated by CEREMP and used to identify the registered market participants. It considered issues related to security and data transfer. Finally, it contained the main use-cases that could characterise CEREMP operations.

### 2.2.3 Software development

- 23 On the basis of the results of the preparatory study, significant additional preparatory work undertaken by the Agency and discussions with IT experts from NRAs, the Agency launched a request for services for CEREMP on the basis of Framework Contract No. ACER/OP/ADMIN/12/2012 in November 2012. This was a first pillar of the Agency's REMIT Information System (ARIS). The Agency concluded a specific contract with the first contractor in December 2012.
- 24 Software development already started in 2012 and continued in 2013.
- 25 The timeline for the implementation of CEREMP will be specified in 2013 with regard to the timeline of the Commission's implementing acts.

## 2.3 Data collection and data sharing

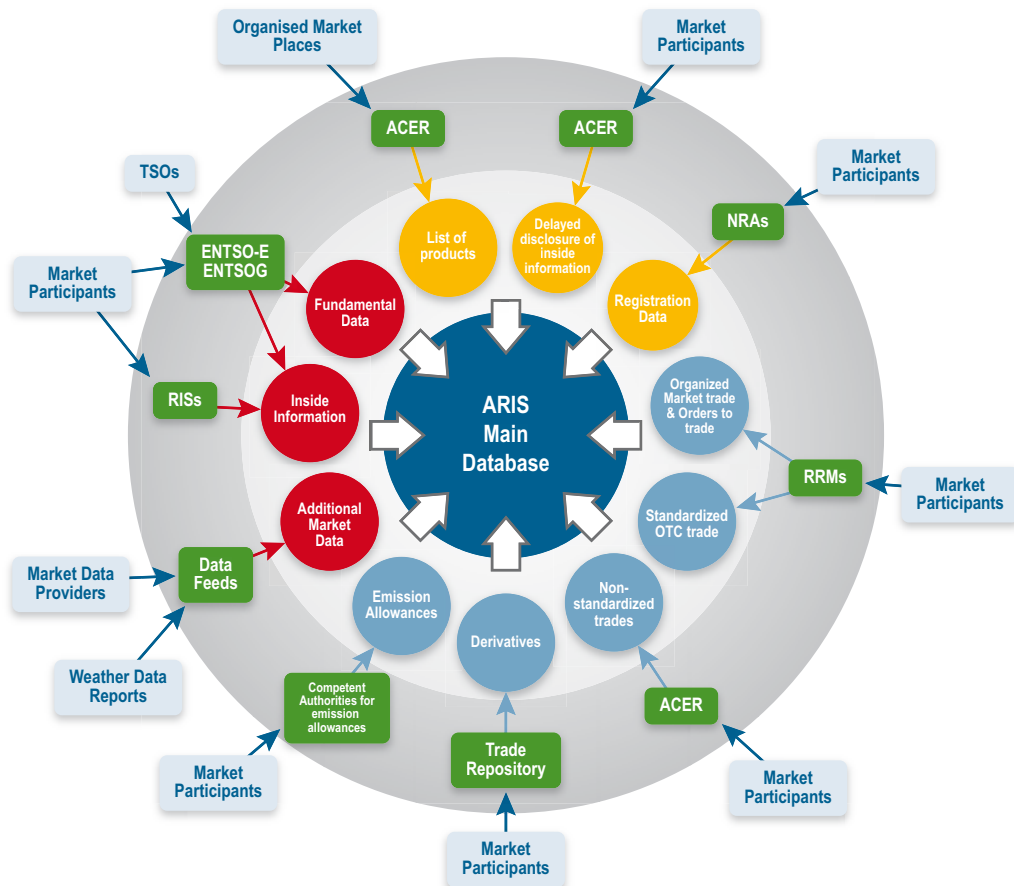
- 26 Efficient wholesale energy market monitoring requires regular and timely access to records of transactions as well as to fundamental data on capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas. For this reason market participants, according to Article 8 of REMIT, shall provide the Agency with a record of wholesale energy market transactions, as well as with fundamental data. Furthermore, according to Article 10 of REMIT, the Agency shall establish mechanisms to share the information it receives with NRAs, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities. In this chapter, the Agency's activities relating to data collection and data sharing are described.
- 27 As the development of mechanisms for sharing of information between ACER, NRAs and other Authorities strongly depend on the Commission's implementing acts which will not be adopted before winter 2013, this deliverable was postponed to the work programme 2013.

### 2.3.1 Recommendations to the Commission on the records of transactions

- 28 According to Article 7(3), the Agency may make recommendations to the Commission as to the records of transactions, including orders to trade. Such transactions are considered necessary to effectively and efficiently monitor wholesale energy markets. Before making such recommendations, the Agency shall consult interested parties, in particular with NRAs, competent financial authorities in the Member States, national competition authorities and ESMA.
- 29 On 23 October 2012, the Agency submitted its recommendations to the European Commission on the records of wholesale energy market transactions. The purpose of the recommendations was to assist the Commission in the preparation of the implementing acts to be adopted in accordance with REMIT. The Agency consulted interested parties in preparing the recommendations, in particular with NRAs, financial supervisory authorities in the Member States, national competition authorities and ESMA. The recommendations were also made available to the European Parliament and the Council and to the public.
- 30 The Agency recommended the following reporting channels and timing for the reporting of information under Article 8(1) of REMIT and considers the recommended approach as keeping reporting obligations to a minimum and not creating unnecessary costs or administrative burdens for market participants:
- Records of transactions, including orders to trade, in wholesale energy contracts executed, or placed, at organised market places, through organised market places or third parties on their behalf within one working day.
  - Confirmations of records of standardised transactions or of transaction in standardised wholesale energy contracts, including derivatives, through trade repositories, clearing houses, trade reporting systems or other RRM (Registered Reporting Mechanisms) within one working day.
  - Confirmations of records of transactions in non-standardised energy commodity contracts through only one party of the contract or third parties on their behalf within one month.
  - Scheduling/nomination data through TSOs or third parties on their behalf within one working day.

- 31 For reasons of operational reliability according to Article 12 of REMIT, the Agency considers it necessary and appropriate that reporting of records of standardised transactions or of transactions in standardised energy commodity contracts, including derivatives, is performed through Registered Reporting Mechanisms (RRMs) and the reporting of regulated information, i.e. inside information and transparency information on fundamental data, is performed through registered Regulated Information Services (RISs).
- 32 The Agency considers that reporting of records of transactions in non-standardised contracts is crucial to have a full picture of the trading activities of market participants and for an effective and efficient market monitoring of wholesale energy markets. The level of standardisation in the natural gas market appears still rather low and a limitation of reporting obligations to records of transactions in standardised contracts only would therefore seriously undermine monitoring of the wholesale gas markets.
- 33 Furthermore, in its recommendations, the Agency indicated its intention also to develop recommendations on the REMIT records of transactions and implementing acts for balancing market contracts and transportation contracts. Following additional consultations with the European Networks for Transmission System Operators for Electricity (ENTSO-E) and Gas (ENTSOG), the Agency on 26 March 2013 submitted to the Commission its recommendations on the records of transactions for balancing market contracts and transportation contracts. These recommendations complement the Agency's recommendations from 23 October 2012.
- 34 The Agency's data collection concept with the RRM and RIS approach described in its recommendations can be illustrated as follows:

■ Figure 3: REMIT Information Data Flow



### 2.3.2 Preparatory study

- 35 At the end of 2011, the Agency commissioned to the University of Ljubljana, a preparatory study concerning technical advice for the Project for data Exchange Specification for Energy Markets monitoring (PESEM). The final report was presented to the Agency in April 2012 and was taken into account in the drafting of the recommendations to the Commission and became a basis for the procurement of the software development services for the Agency's REMIT Information System (ARIS) for data collection and data sharing under REMIT (see above point 13 *et seq.*). The preparatory study proposed a model for capturing the records of wholesale energy market transactions, including orders to trade and compiled a list of standard energy and transmission capacity contracts for electricity and gas. It also contained a report on the preliminary list of fundamental data sources and their specifications as related to the wholesale European energy market. Finally, it provided a comparative grid of contracts versus the legal structure that govern the reporting obligations of market participants under REMIT and EU financial market legislation.
- 36 In parallel to the aforementioned preparatory study, Agency staff participated in the steering committee chaired by DG ENER staff concerning Technical Advice for setting up a data reporting framework delivered by DG ENER's consultants. As a result, Agency staff contributed to the final report delivered on 20 June 2012 by DG ENER's consultants (hereafter referred to as "the DG ENER's consultant advice"). On 14 September 2012, DG ENER launched a stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets<sup>6</sup>. The DG ENER's consultant advice, which was attached to the public consultation document, confirmed the Agency's RRM and RIS approach.

### 2.3.3 Software development

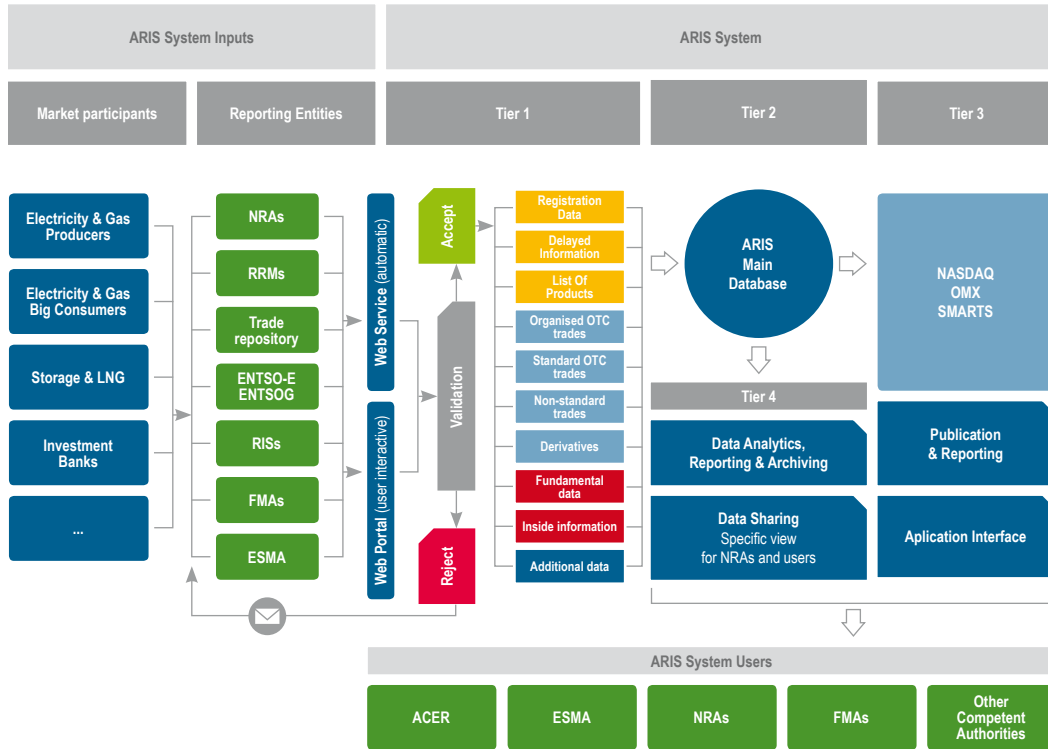
- 37 On the basis of the results of the aforementioned technical advice, significant additional preparatory work undertaken by the Agency and discussions with IT experts from NRAs, the Agency developed the following concept for ARIS.
- 38 ARIS will be structured in four pillars or tiers. The first pillar or tier of ARIS will gather the information to be reported under REMIT, including the registration data on the market participants having to register under REMIT. CEREMP will form part of this tier. It will be fed with information from the national registers, established and managed by NRAs, according to the registration format determined by the Agency in cooperation with NRAs.
- 39 The second pillar or tier will be the establishment of a data collection and reporting system. Reporting formats, channels and timing need to be set by the European Commission with the implementing acts.
- 40 A third pillar or tier shall be the establishment of a market monitoring system, which will analyse and pre-screen all the collected transactions and fundamental data in such a way as to identify possible market abuse cases (i.e. suspicious events) and alert the Agency's experts in the Market Monitoring Department of such cases. The market monitoring system will also be used for supporting the investigations to be conducted by NRAs in coordination with the Agency.
- 41 A fourth pillar or tier will be the establishment of a data sharing system. According to Article 10 of REMIT, the Agency shall establish mechanisms to share the information held in ARIS with NRAs, financial regulatory authorities, national competition authorities, the ESMA and other relevant authorities. This tier will also be used for additional data analytics, reporting and archiving. It may also be used for the publication of certain aggregated information according to Article 12(2) of REMIT.

6 [http://ec.europa.eu/energy/gas\\_electricity/consultations/doc/20121207\\_wholesale\\_energy\\_markets\\_consultation\\_paper.pdf](http://ec.europa.eu/energy/gas_electricity/consultations/doc/20121207_wholesale_energy_markets_consultation_paper.pdf)



42 The following illustrates the Agency's concept for ARIS:

■ Figure 4: ARIS High Level Design



43 According to the requirements set out in Article 12 of REMIT, ARIS must be operationally reliable. In particular, the Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in ARIS.

44 The Agency intends to have the ARIS available within six months of the adoption of the Commission's implementing acts. The timeline will be specified in 2013 with regard to the timeline of the Commission's implementing acts.

45 Software development started in 2013.

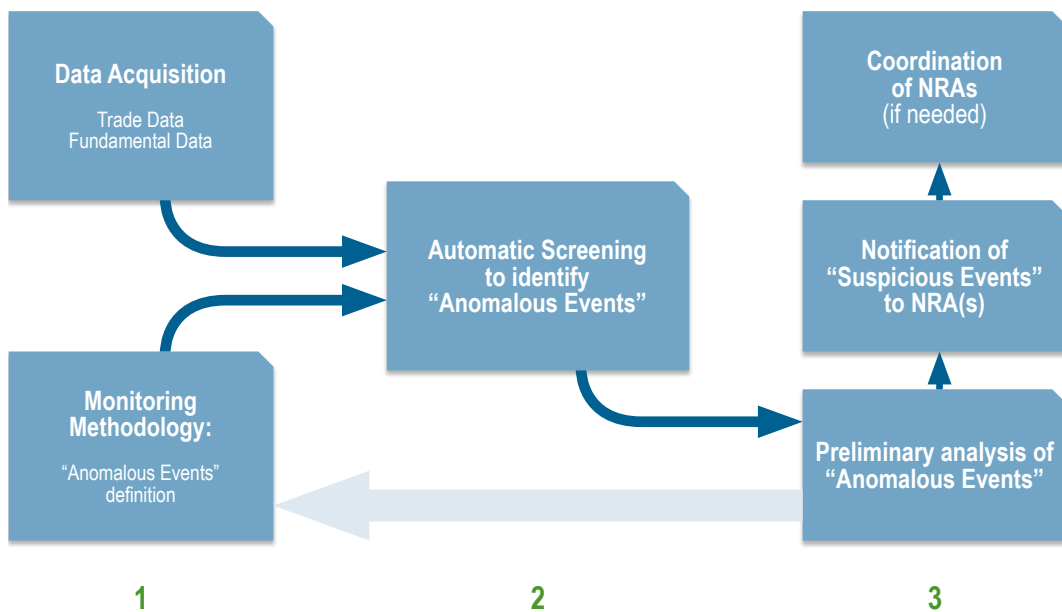
## 2.4 Market monitoring solution

46 According to Article 7 of REMIT, the Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation. According to Article 16 of REMIT, NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets, and ensure that the prohibitions of insider trading and market manipulation are applied in accordance with Article 13 of REMIT. In this section, the Agency's market monitoring approach under REMIT is described based on the legal framework provided in REMIT.

### 2.4.1 The Agency's market monitoring concept

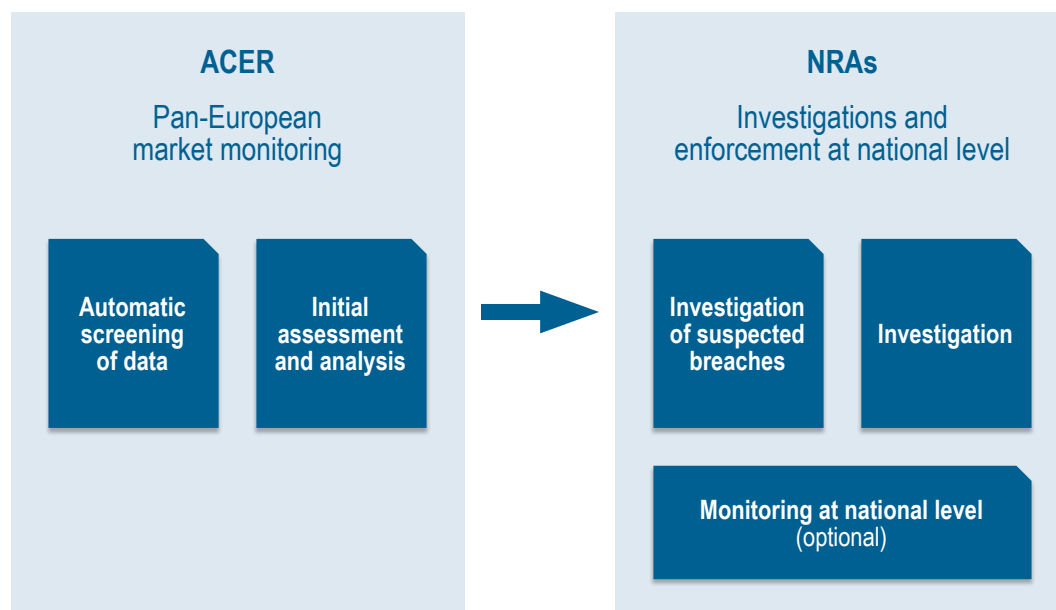
47 In 2011 and 2012, the Agency developed the following market monitoring approach.

■ Figure 5: The Agency's market monitoring approach



48 The automated screening will form part of the Agency's monitoring activities. Article 16(4) of REMIT also requires initial assessments or analysis from the Agency prior to notifying a suspected breach of REMIT to a NRA and prior to using its powers under Article 16(4) of REMIT. The following figure illustrates this two-step approach envisaged by the Agency which is explained in more detail in the chapter concerning the Agency's market monitoring strategy.

■ Figure 6: The Agency's market monitoring approach



49 In December 2012, the Agency concluded a Framework Contract for the development of a market monitoring system (see Section 2.1) to enable the Agency to perform its market monitoring tasks according to Article 7(1) of REMIT (automated screening). The software was ordered in December 2012.

50 The Agency expects to have the market monitoring software available at the latest six months after the adoption of the Commission's implementing acts. The timeline will be specified in 2013 with regard to the timeline of the Commission's implementing acts.

51 Software customisation started in 2013.

## 2.5 Coordination and cooperation framework

### 2.5.1 Coordination and cooperation with NRAs

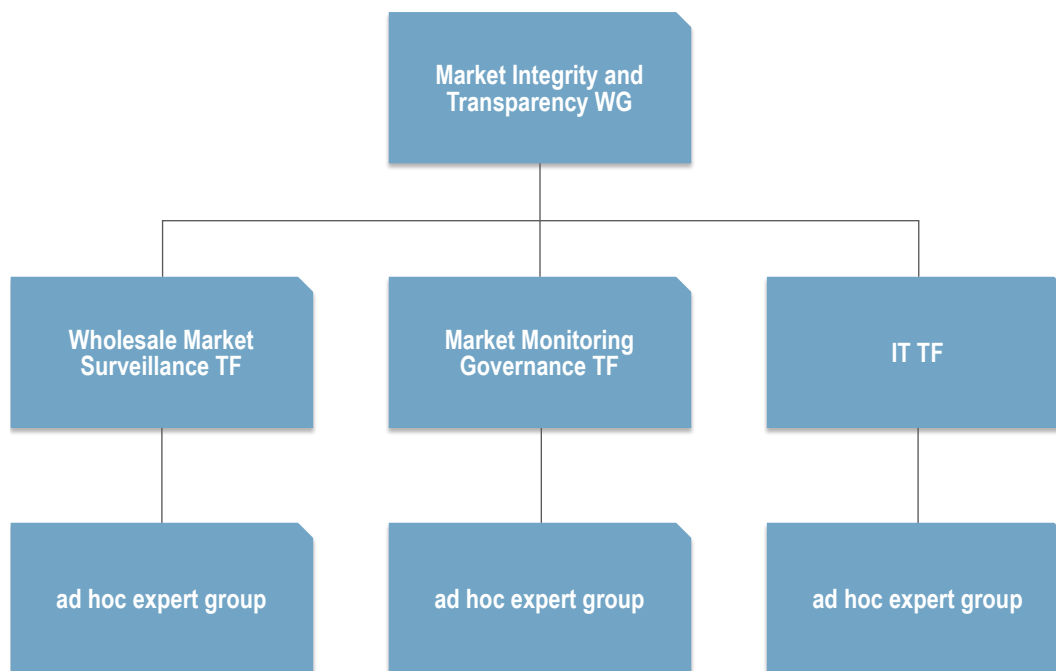
- 52 Regulatory cooperation is a focal element of REMIT. The Director is consulting the Agency's BoR on all aspects of implementation of this Regulation and gives due consideration to its advice and opinions.
- 53 In parallel, close cooperation and coordination between the Agency and NRAs is necessary to ensure proper monitoring and transparency of energy markets. Coordination is needed between the ambit of responsibilities of the Agency (monitoring of the European market) and NRAs (monitoring of national markets and enforcement). The creation of the Agency's Market Integrity and Transparency Working Group (AMIT WG) allows the early input from NRAs to be taken into account in the Agency's work. Furthermore, the regular discussions in the BoR to which the Director presents his proposals and provides regular updates on progress will continue to promote such collaboration and to ensure that a coordinated approach is taken to the implementation of the relevant rules.
- 54 Additional tools to reinforce this collaboration were developed in 2012 (and in 2013).

#### 2.5.1.1 Establishment of Working Groups, Task Forces and Expert Groups

- 55 In September 2011, i.e. before REMIT was adopted, the BoR of the Agency created an Ad-hoc Group on REMIT implementation to start preparations for the Agency's and NRAs' forthcoming tasks with regard to REMIT implementation. The group consisted of staff from both the Agency and NRAs and its scope was to provide information on the REMIT implementation timetable and what needed to be done with regard to monitoring of wholesale energy markets under REMIT.
- 56 Based on the work undertaken by the Ad-hoc Group, the Director decided in early 2012 to establish the ACER Market Integrity and Transparency Working Group (AMIT WG) to tackle the tasks related to REMIT implementation. In order to carry out the envisaged work, the following task force structure was established under the AMIT WG during 2012:
- Market Monitoring Governance Task Force (MMG TF), dealing with e.g. the registration format and recommendations on data collection.
  - Wholesale Markets Surveillance Task Force (WMS TF), providing input for the continuous update of the non-binding ACER Guidance and facilitating cooperation and coordination of market monitoring practices.
  - IT Task Force (IT TF), dealing with the implementation of the IT systems for registration, data collection and data sharing, as well as IT security and other IT-related issues.
- 57 The Agency's Working Groups and Task Forces provide support to the Agency in carrying out its duties under REMIT. From an early stage, the Agency's Working Groups allow Agency staff and representatives of NRAs to work together. The Working Group is composed of Agency staff and of senior representatives of NRAs. The European Commission is also invited to participate. Participants in the Agency's Working Groups and Task Forces are bound by certain rules for their functioning, including measures to legally align the provisions governing the functioning of the Working Groups and Task Forces with those governing the functioning of the Agency, especially in the areas of confidentiality and intellectual property rights.

- 58 Linked to each of the three Task Forces under the AMIT WG, the Agency established an ad-hoc Expert Group. Each ad-hoc Expert Group consists of up to ten industry experts from market participants, industry organisations, energy exchanges and IT providers. The goal of the expert groups is to advise and assist the Task Forces in their respective tasks.

■ Figure 7: Overview of Working Group, Task Force and Expert Group structure



#### 2.5.1.2 REMIT notification platform

- 59 Since REMIT entered into force, market participants and persons professionally arranging transactions have been obliged to fulfil the obligations described in:
- Article 3(4)(b) and 4(2) - Obligation to publish inside information;
  - Article 15 - Obligations of persons professionally arranging transactions.
- 60 On 28 December 2011, the Agency launched a web application for the notification of such incidents to the Agency and to NRAs and published a user guide on its website<sup>7</sup>.

7 <http://www.acer.europa.eu/remit/Pages/Important-information-for-market-participants.aspx>

### 2.5.1.3 REMIT Forum

- <sup>61</sup> For the purpose of facilitating the exchange of opinions between NRAs and the Agency on issues related to REMIT, the Agency established the REMIT Forum in April 2012. The REMIT Forum is based on an information platform for the exchange of questions received from market participants and discussion among NRAs and the Agency on possible answers. The REMIT Forum is only for internal use and is used as an input for the Guidance on the application of REMIT and the Q&A document. The REMIT Forum is open only to staff from NRAs and the Agency involved in REMIT implementation. The general idea of the REMIT Forum is to provide a useful tool for ensuring harmonisation of views on REMIT among NRAs and the Agency. During 2012, 41 questions were posted on the Forum and discussed between representatives from the Agency and NRAs.

### 2.5.1.4 MoU between the Agency and NRAs

- <sup>62</sup> There are several references in REMIT to the cooperation between the Agency and NRAs. In order to ensure a smooth cooperation between the Agency and NRAs under REMIT, the Agency started to work on establishing a multilateral Memorandum of Understanding (MoU) in 2012. The purpose of the MoU is to define the scope and practical terms of the cooperation under Articles 7 and 16 of REMIT between the Agency and NRAs, with the aim of promoting an effective, efficient and coordinated monitoring of wholesale energy markets as referred to in REMIT. The purpose is to set out the procedures that the Agency and the NRAs intend to follow, and is not intended to create any additional obligations or to replace or amend existing legislation. The MoU was finalised in 2013 and signed by the Agency and 28 NRAs on 17 July 2013.

### Box 1: Status of REMIT implementation at national level

The Agency's activities related to REMIT so far include an evaluation of the status of REMIT implementation at national level as indicated by NRAs<sup>8</sup>. With the aim of getting an updated picture of the status of REMIT implementation at national level, the Agency carried out a survey among NRAs in spring 2013. The survey was based on a questionnaire which covered topics such as the implementation of legal powers to enforce REMIT and training needs. The survey is a follow-up to a similar exercise on REMIT Implementation carried out in early 2012. In this Box, the results of the latest survey are presented.

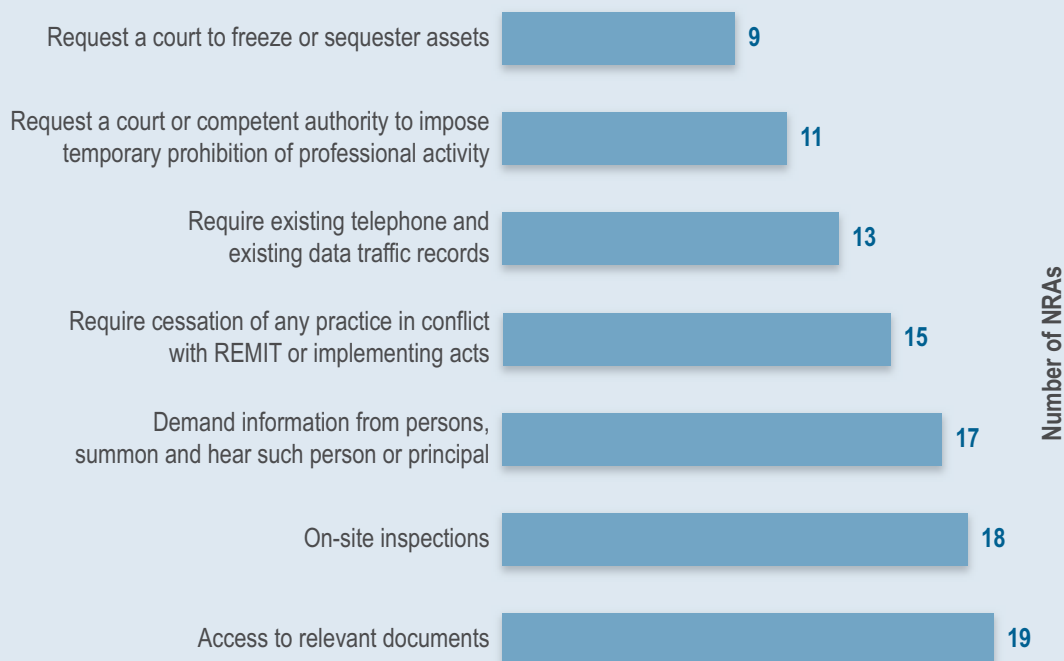
In total, 26 NRAs provided answers to the questionnaire (including Northern Ireland). Only NRAs from Cyprus and Malta did not respond.

According to Article 18 of REMIT, Member States shall lay down the rules on penalties applicable to infringements of REMIT and shall take all measures necessary to ensure that they are implemented. The Member States shall notify those provisions to the Commission by 29 June 2013 at the latest and shall notify it without delay of any subsequent amendment affecting them to enable the Commission to monitor the effective national implementation.

#### National implementation of legal powers and sanctioning rules

According to Article 13(1) of REMIT, each Member State shall ensure, by 29 June 2013, that its NRA has the investigatory and enforcement powers necessary for ensuring that the prohibitions and the obligations under REMIT apply. Figure 8 illustrates the type of investigatory and enforcement powers that the NRAs reported that they will be equipped with in accordance with Article 13(1).

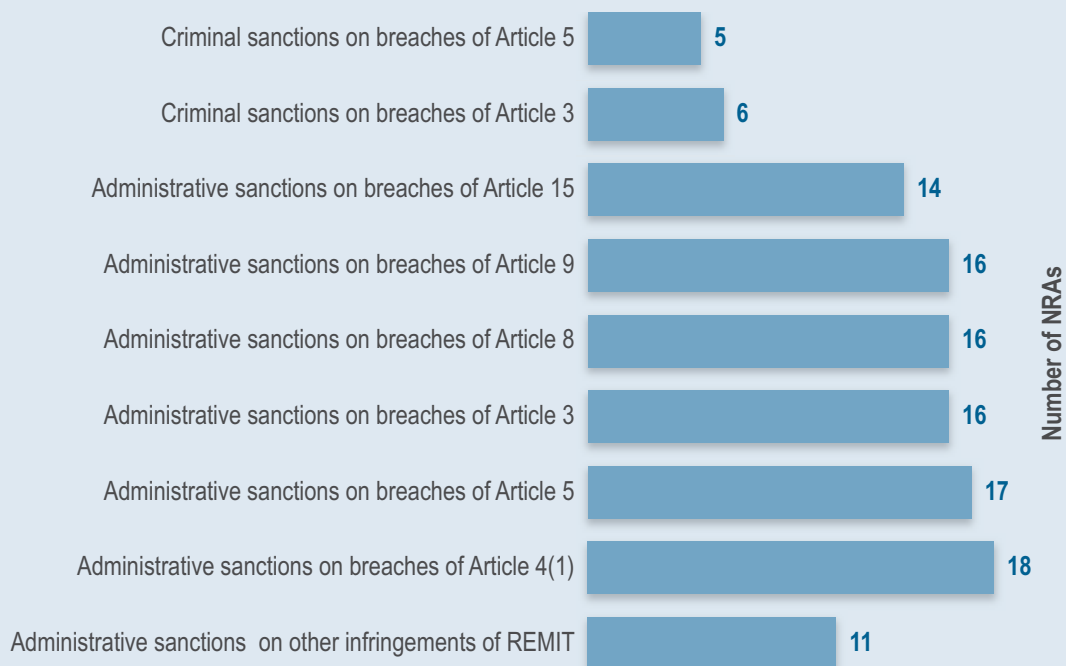
■ **Figure 8: Type of investigatory and enforcement powers foreseen at national level in accordance with Article 13 of REMIT**



<sup>8</sup> The following overview about the status of REMIT implementation at national level is based on voluntary contributions from NRAs from May 2013. It can therefore only present a snapshot and does not claim to be complete. Please note that this overview does not replace and is without prejudice to the obligation on Member States to notify to the Commission the provisions on the national implementation of REMIT according to Article 18 of REMIT.

Figure 9 shows which type of penalties have been or will be implemented in the Member States applicable to infringements of REMIT in accordance with Article 18 of REMIT.

■ Figure 9: Type of penalties foreseen at national level applicable to infringements of REMIT in accordance with Article 18 of REMIT

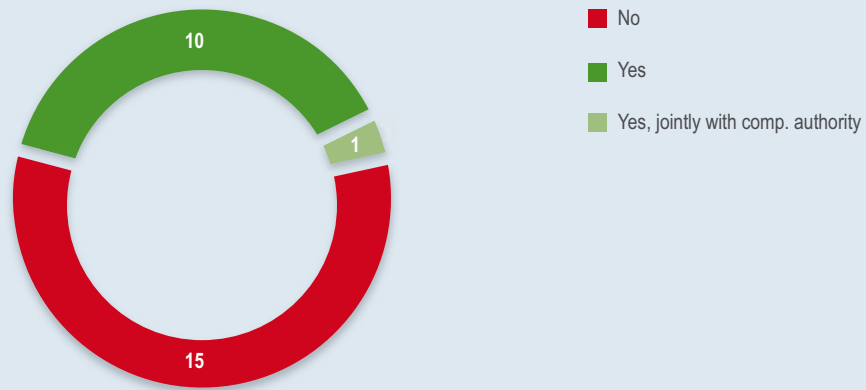


According to Article 7(2) of REMIT, NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets. NRAs may also monitor trading activity in wholesale energy products at national level.



Figure 10 shows the number of NRAs currently monitoring wholesale energy markets at national level.

■ Figure 10: NRAs currently monitoring wholesale energy markets at national level according to Article 7 of REMIT



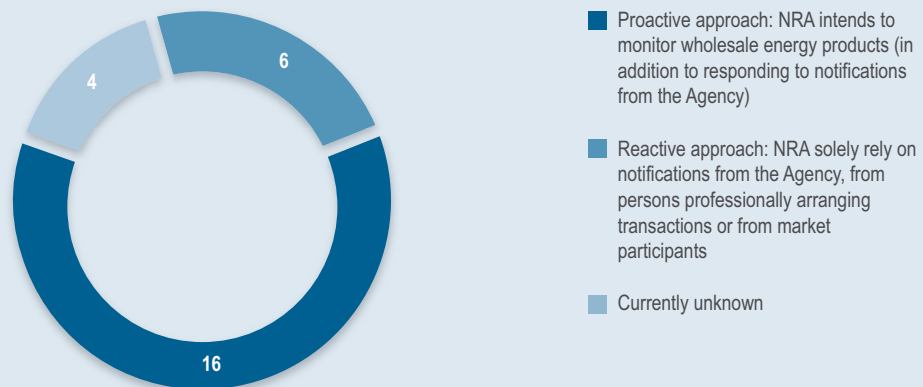
Although a majority of NRAs indicate that they monitor overall trends and tendencies in wholesale energy markets, ten NRAs report that the aim of their monitoring at national level is to detect and prevent market manipulation and insider trading as defined in REMIT. Out of the ten NRAs monitoring markets at national level according to Article 7 of REMIT, six NRAs indicate that they are using a dedicated surveillance software to detect potential market abuse.

#### Envisaged approach to market monitoring at national level once data collection under REMIT applies

Once data collection under REMIT applies, the NRAs will have access to relevant information held by the Agency which it has collected in accordance with REMIT. This will provide the NRAs with a better basis for their market monitoring at national level.

Figure 11 shows the NRAs' envisaged approach to market monitoring once data collection applies

■ Figure 11: Envisaged approach to market monitoring once data collection under REMIT applies



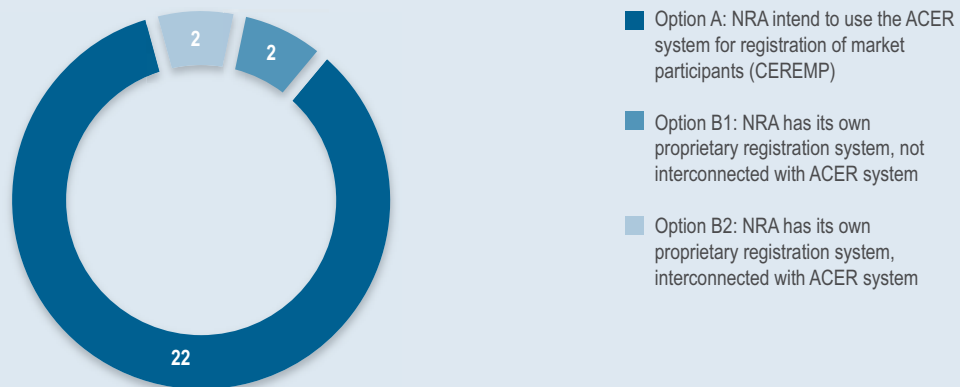
A majority of the NRAs foresee a proactive approach to market monitoring once data collection under REMIT applies, meaning that those NRAs intend to monitor trading activity in wholesale energy products at national level.

12 out of the 26 NRAs providing answers to the questionnaire stated that they intend to cooperate on a continuous basis at regional level with other NRAs in monitoring wholesale energy markets. It was also highlighted that in some regions, such a cooperation is already in place, e.g. between the Spanish and Portuguese NRAs. 22 NRAs were of the opinion that the Agency should actively encourage regional collaboration between NRAs on wholesale markets. Furthermore, 16 NRAs reported that they intend to cooperate on a continuous basis with energy exchanges in monitoring wholesale energy markets. In some markets, e.g. the Iberian, Italian and Nordic markets, such a cooperation is already in place.

### Registration of market participants

The Agency is currently developing a registration software which could also be used by NRAs for the registration of market participants at national level. Figure 12 shows the NRAs' approach to the registration of market participants.

■ Figure 12: NRAs' approach to the registration of market participants



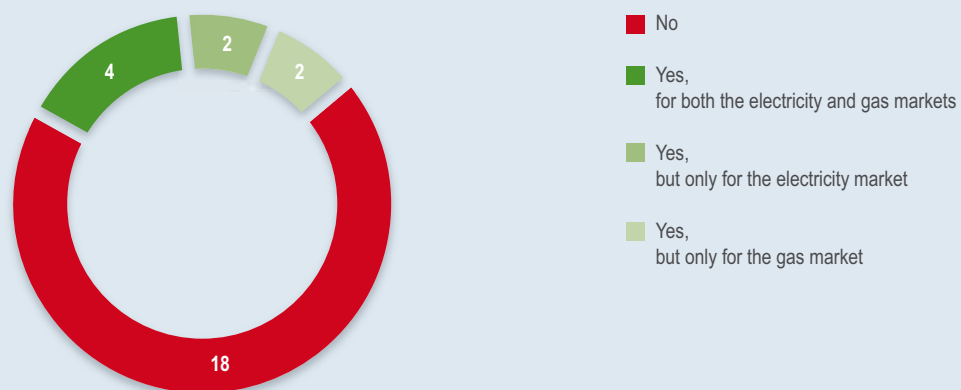
Nearly all NRAs reported that they will rely on the registration software developed by the Agency. Presently, only one NRA foresees to raise fees for the registration of market participants.

### Disclosure of inside information

Market integrity and the level of transparency fundamentally depend on the availability of inside information. According to Article 4(1) of REMIT, market participants have to publicly disclose inside information in an effective and timely manner. In the Agency's Guidance to NRAs on the application of REMIT, the Agency considers publication through platforms as the most effective way of publishing inside information under Article 4(1) of REMIT and allows, at least for an interim period, for disclosure of inside information through company websites.

Figure 13 shows the number of platforms currently existing for the disclosure of inside information.

■ Figure 13: Existence of platforms for disclosure of inside information



Currently, only a few national or regional platforms for the disclosure of inside information exist. Only four NRAs stated that there is a platform solution available for both electricity and gas in their Member State, while an additional four NRAs reported that there is a platform for either electricity or gas. 18 NRAs reported that there is still no platform available for inside information in their Member States. The majority of NRAs consider publication through platforms as the preferred option for publication of inside information.

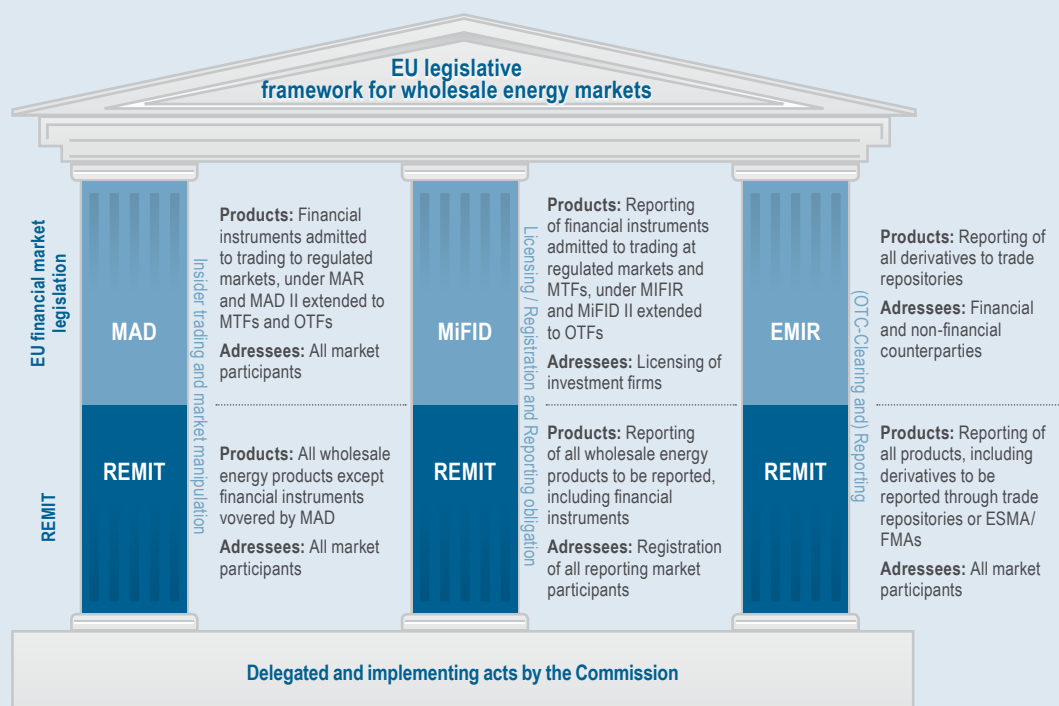
## 2.5.2 Coordination and cooperation with ESMA and financial market authorities

<sup>63</sup> There are several references in REMIT to the cooperation between the Agency, ESMA and national financial market authorities due to the numerous interactions between REMIT and EU financial market legislation. This is why the Agency already aimed for close cooperation with ESMA prior to the entry into force of REMIT and for the formalisation of this cooperation.

### Box 2: Interdependencies between REMIT and EU financial market legislation

The following figure illustrates the interaction between REMIT and relevant EU financial market legislation, namely MAD, MiFID, which were under review in 2012 and will become MiFIR / MiFID II and MAR / MAD II as soon as adopted, and EMIR:

■ Figure 14: Interdependencies between REMIT and relevant EU financial market legislation



The regulatory matters under MAD, MiFID and EMIR, on the one hand, and REMIT, on the other hand, are comparable regarding the definitions of market abuse, the obligations and prohibitions for market participants, the licensing requirement under MiFID and the registration requirement under REMIT, the transaction reporting obligations for market participants and the coordination, monitoring, investigation and enforcement by regulators. However, the regulatory competences are differently assigned between the Union and national levels.

■ Table 1: Regulatory roles under REMIT and European financial legislation

Regulatory Role	REMIT	MAD/MiFID/EMIR
Coordination role	ACER	ESMA
Market Monitoring	ACER and NRAs (if the relevant Member State assigns monitoring powers to its NRA)	FMAs
Registration of market participants/ Licensing of investment firms	NRAs	FMAs
Registration and supervision of trade repositories	n.a.	ESMA
Trade data collection	ACER	FMAs
Data exchange	ACER	FMAs through ESMA
Cross-border coordination	ACER	FMAs

Accordingly, whilst the Agency and ESMA have a comparable general coordination role at Union level and national authorities comparable powers concerning investigations and enforcement at national level, the Agency has additional regulatory powers compared to ESMA concerning the coordination of cross-border cases through investigatory groups which it establishes and coordinates, market monitoring and trade data collection. With regard to the latter two regulatory matters, the Agency's competences are comparable to the competences of national financial authorities (FMAs) under EU financial market legislation. In this context, it is important to note the new approach to trade data collection under EU financial market legislation established under EMIR with the reporting through trade repositories and further enhanced under the MiFID review with the reporting through Approved Reporting Mechanisms (ARMs). According to Article 2(2) of the MiFIR proposal, "ARM" means a person authorised under the provisions established in the MiFID II Directive to provide the service of reporting details of transactions to competent authorities or ESMA on behalf of investment firms. Under the Commission proposal for the MiFID review, the preferred route regarding transparency towards regulators is to combine an extended scope of transaction reporting with better reporting through the set-up of ARMs. This will allow a much more extensive monitoring of markets by regulators leading to reinforced market integrity. This aims to improve the quality of transaction reporting in a number of aspects.

In the MiFID review impact assessment, the Commission expects increase of efficiency of reporting channels by the setting up of ARMs and allowing for trade repositories under EMIR to be approved as an ARM under MiFID. According to the Commission, the advantage of this approach is that it ensures consistency of data reporting through requirements on the reporting firms. By allowing trade repositories to serve as ARMs, this option would also limit the risk of double reporting by firms. Trade repositories are likely to have all the data required to be reported under MiFID. If data requirements are not the same under MiFID and EMIR, firms would have to send additional data fields to enable trade repositories to report on their behalf. According to the Commission, third party transaction reporting is already being conducted through ARMs, notably in larger Member States (Germany and United Kingdom for instance). This option will seek to harmonise the framework under which they operate and ensure clear oversight. The main disadvantage of this approach is that it will impose additional costs on reporting firms, as the ARMs may charge a fee for the transmission of data on their behalf, notably when additional systems investments are necessary. However, this fee may be lower than the costs incurred by the firm when it chooses to report its transactions itself. In the impact assessment for EMIR, the Commission services had already evaluated that the information on the fees charged by the existing trade repositories is not publicly available, but according to the information provided to the Commission services the fees do not appear to be particularly high. The overall impact on the costs of this measure should therefore be relatively limited. This cost impact, especially for smaller market participants, could be mitigated significantly by allowing them to delegate the reporting to their counterparties. In most cases, the delegation would be to bigger institutions with whom small market participants usually enter into OTC derivative contracts and who are better adapted to shoulder the costs of the reporting. In case these bigger institutions already voluntarily report their contracts, then the marginal cost of reporting on behalf of their counterparties would be very small, if not even zero.

The ARMs approach foreseen in the Commission proposal for a MiFID review was reflected in the Agency's recommendations to the Commission on the records of transactions when proposing reporting through Registered Reporting Mechanisms (RRMs). For reasons of harmonisation with data reporting under EMIR, MiFID and REMIT, it should be considered for the Commission's implementing acts under Article 8(2) and (5) of REMIT.

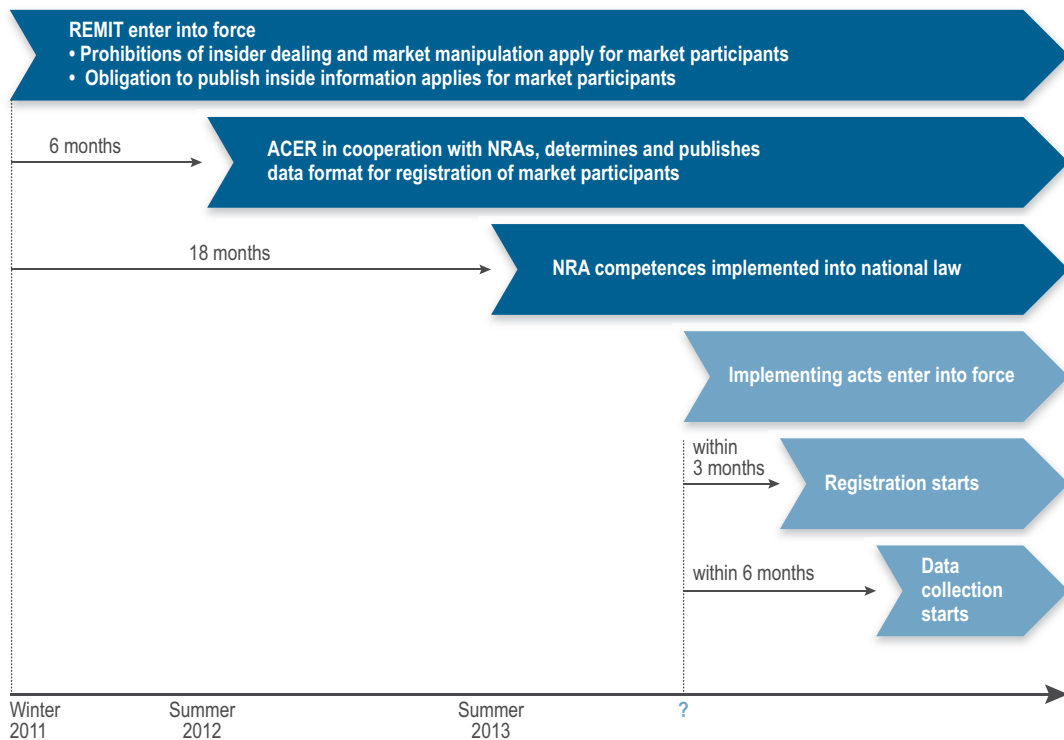
The Agency will closely follow the review of the EU financial market legislation and assess the potential effects on the interaction with REMIT in 2013.

- 64 Already since October 2011, the Agency and ESMA established ad hoc cooperation at staff level. In the beginning, this ad hoc cooperation mainly concerned the parallel development in the REMIT and EMIR implementation and aimed at a coordinated approach for data collection under REMIT and EMIR. It also included the sharing of experiences in IT implementation of data collection and data sharing.
- 65 The cooperation further developed in 2012, both with ESMA and major national financial market authorities. Several bilateral meetings at staff level were organised and discussions extended to the interdependencies between REMIT and MAD, MiFID and EMIR as well as the ongoing review of EU financial market legislation. Since REMIT, contrary to MiFID and EMIR, foresees data collection directly at Agency level, the Agency benefited from the experiences of major national financial market authorities collecting data under MiFID.
- 66 Following a meeting at management level between the Agency's and ESMA's Directors in May 2012, ACER staff were regularly invited and participated in the newly established ESMA Commodity Derivatives Task Force and ESMA's IT Management and Governance Group, ESMA staff was regularly invited and participated in the newly established ACER Market Integrity and Transparency Working Group and its REMIT IT Management and Governance Task Force. ACER and ESMA formally consulted each other bilaterally in their public consultations on the Agency's draft recommendations to the Commission on the records of transactions and on ESMA's draft technical standards for EMIR.

## 2.6 Timeline for REMIT implementation

- 67 REMIT was published in the Official Journal of the EU on 8 December 2011. On 28 December, the prohibitions of insider trading and market manipulation, the obligation for market participants to publish inside information and the obligation for persons professionally arranging transactions to establish and maintain effective arrangements to detect market abuse and to notify suspicious cases to national regulatory authorities, came into force.
- 68 Within 6 months of the entry into force of REMIT, i.e. by 28 June 2012, the Agency was required to determine a format for the registration of market participants, and within 18 months, i.e. by 28 June 2013, Member States were called to assign investigatory and enforcement powers to NRAs and put in place rules on penalties applicable to infringements of REMIT.
- 69 The timing of entry into force of the remaining provisions of REMIT depends on the timing of the adoption of the implementing acts by the European Commission following comitology procedure. Within 3 months of the adoption of the implementing acts, NRAs shall establish national registers of market participants. Within 6 months of the adoption of the implementing acts, data collection under REMIT starts.

■ Figure 15: Provisional timetable for REMIT implementation



## 3 The Agency's market monitoring and coordination activities under REMIT

### 3.1 Introduction

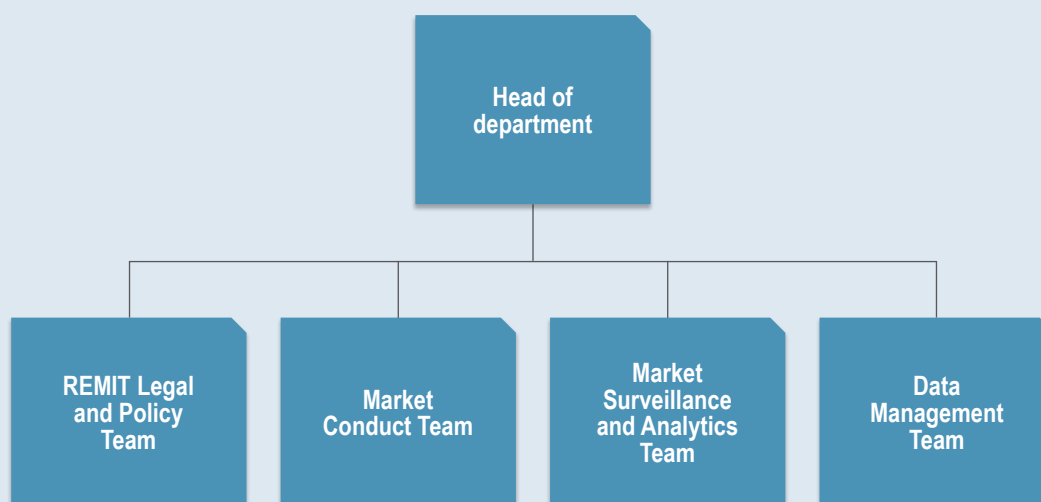
- <sup>70</sup> REMIT introduced explicit prohibitions for market manipulation, attempted market manipulation and insider trading, which took effect immediately as the Regulation entered into force on 28 December 2011. Market participants are also under the obligation to publish inside information and to notify the Agency and the relevant NRA and competent authority of any delay in such a publication. Finally, trading venues and other persons professionally arranging transactions in wholesale energy products are required to establish and maintain effective arrangements and procedures to identify breaches of the market abuse prohibitions and notify NRAs of any suspected instance. Therefore, already today, the Agency is called to act on instances of delayed publication of insider trading or market manipulation, including the coordination of cross-border cases.
- <sup>71</sup> In this chapter, the Agency's strategy for wholesale market monitoring under REMIT is described based on the legal framework provided in REMIT. This chapter also includes an overview of the cases of potential breaches of REMIT that the Agency was involved in during 2012, as well as an assessment of the operation and transparency of market places and other ways of trading in EU wholesale energy markets.
- <sup>72</sup> Close cooperation and coordination between the Agency and NRAs is necessary to ensure proper monitoring and transparency of energy markets. More specifically, according to Article 16 of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. Moreover, NRAs shall in accordance with Article 7 of REMIT cooperate at regional level and with the Agency in carrying out the monitoring.



### Box 3: Organisational set-up and development

Prior to REMIT, the Agency's staff was organised in four departments: the Director's Office, the Electricity Department, the Gas Department and the Administration Department. Whilst the initial REMIT implementation team was actually established in the Director's Office, the Agency established a new Market Monitoring Department in October 2012, in order to carry out the new tasks that the Agency was entrusted with under REMIT. The organisational set-up of the Market Monitoring Department is shown in the figure below.

■ Figure 16: Organisational set-up of the Agency's Market Monitoring Department



The Commission's legislative proposal of REMIT indicated that 15 additional staff members and seconded national experts are assigned for the implementation of this Regulation. However, during 2012, only limited staff were available. Already in autumn 2011, 1.5 SNEs were assigned to REMIT implementation tasks and a REMIT implementation team was established in the Director's Office. It consisted of the 1.5 SNEs and was supported by two IT team members and two Director's Office staff members.

Following the establishment of the Market Monitoring Department on 1 October 2012 and the recruitment of the Head of the Market Monitoring Department, additional staff members have been recruited during 2012 and in the first half of 2013. In particular, out of the 15 additional staff members, 5 (3 temporary agents and 2 SNEs) were already recruited in 2012.

In the implementation phase, this additional staff are devoted to planning and supervising system development, including the drafting of technical specifications, the management of contracts with developers and data providers, the testing of the environment, the user management and support, etc. This staff are also responsible for drafting procedures and protocols, both for the internal data management and monitoring and for data sharing with other authorities. Data security is also being addressed. It is supported by IT and administrative staff from the Administration Department as required. Only limited staff will be available for market monitoring and coordination activities. This will particularly be the case during the implementation phase.

## 3.2 Guidance to NRAs on the application of REMIT

### 3.2.1 The Agency's mission and role of the guidance

- <sup>73</sup> As already indicated, according to Article 16(1) of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. In this context, the Agency shall publish non-binding Guidance on the application of the definitions set out in Article 2 of REMIT.
- <sup>74</sup> Consequently, on 20 December 2011, eight days before the entry into force of REMIT, the Agency published its first edition of such Guidance. The Guidance was directed at NRAs to ensure the required coordination and consistency in their future monitoring activities under REMIT. The first edition of the Guidance focused on the three issues which the Agency considered as priorities following the entry into force of REMIT, namely the definition of inside information, the definition of market manipulation and what the Agency considers to be possible signals of suspected insider dealing and market manipulation that should be notified to NRAs by persons professionally arranging transactions.
- <sup>75</sup> On 28 September 2012, the Agency published the second edition of the Guidance to NRAs on the application of REMIT. In the second edition, the Agency updated the Guidance on the application of the market abuse definitions, but also extended it to the scope of REMIT in relation to EU financial market legislation, the application of definitions of wholesale energy market, wholesale energy products and market participants, the application of the obligation to disclose inside information and the application and implementation of the prohibitions against market abuse.
- <sup>76</sup> The Guidance will be updated in later editions on the basis of the experience gained by the Agency and NRAs in the implementation of REMIT, including through feedback from energy market participants and other stakeholders.

### 3.2.2 Market abuse definitions of REMIT

- <sup>77</sup> The Guidance illustrates *inter alia* the Agency's understanding of the market abuse definitions of REMIT. Market abuse means insider trading and market manipulation, which became explicitly prohibited with the entry into force of REMIT.
- <sup>78</sup> The following seven types of behaviour may amount to market abuse, the first three of which constitute insider trading, the last four of which constitute market manipulation, including attempted market manipulation:
1. Insider trading – when an insider trades, or tries to trade, in wholesale energy products on the basis of inside information relating to that wholesale energy product, Article 3(1)(a) of REMIT.
  2. Improper disclosure of inside information – where an insider improperly discloses inside information to another person, unless such disclosure is made in the normal course of the exercise of their employment, profession or duties, Article 3(1)(b) of REMIT.
  3. Recommending on the basis of inside information – where an insider is recommending or inducing, on the basis of inside information, another person to acquire or dispose of wholesale energy products to which that information relates, Article 3(1)(c) of REMIT.
  4. False/misleading transactions - trading, or placing orders to trade, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, Article 2(2)(a)(i) and (3)(a)(i) of REMIT.

5. Price positioning - trading, or placing orders to trade, which 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 his 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, Article 2(2)(a)(ii) and (3)(a)(ii) of REMIT.
  6. Transactions involving fictitious devices or any other form of deception – trading, or placing orders to trade, which employs fictitious devices or any other form of deception or contrivance, Article 2(2)(a)(iii) and (3)(a)(iii) of REMIT.
  7. Dissemination of false and misleading information – giving out information that conveys a false or misleading impression about a wholesale energy product where the person doing this knows or ought to have known the information to be false or misleading, Article 2(2)(b) and (3)(b) of REMIT.
- 79 In its Guidance to NRAs on the application of REMIT, the Agency provides non-exhaustive lists of possible signals of insider trading and market manipulation. The signals are neither conclusive nor comprehensive and should only be regarded as a starting point when considering whether a transaction gives rise to indications of possible suspicious behaviour. It is recognised that transactions meeting the signals listed below may be legitimate and, hence, not give reasonable grounds for suspicion.
- 80 The following events may be considered as signals of potential insider trading situations:
- a) significant trading by major market participants before the announcement of information having a significant price effect;
  - b) transactions resulting in sudden and unusual changes in the volume of orders and prices before the announcement of information having a significant price effect.
- 81 The following non-exhaustive list of signals, which should not necessarily be deemed in themselves sufficient to determine market manipulation, may be taken into account when transactions or orders to trade are examined by persons professionally arranging transactions related to false or misleading signals and to price securing<sup>9</sup>:
- a) the extent to which orders to trade given or transactions undertaken represent a significant proportion of the daily volume of transactions in the relevant wholesale energy product on the trading venue concerned, in particular when these activities lead to a significant change in the price of the wholesale energy product;
  - b) the extent to which orders to trade given or transactions undertaken by persons with a significant buying or selling position in a wholesale energy product lead to significant changes in the price of the wholesale energy product or a related wholesale energy product admitted to trading on a trading venue;
  - c) whether transactions undertaken lead to no change in beneficial ownership of a wholesale energy product admitted to trading on a trading venue;
  - d) the extent to which orders to trade given or transactions undertaken include position reversals in a short period and represent a significant proportion of the daily volume of transactions in the relevant wholesale energy product on the trading venue concerned, and might be associated with significant changes in the price of a wholesale energy product admitted to trading on a trading venue;

9 Concerning wholesale energy products which are financial instruments, see Article 4 of implementing Directive 2003/124/EC on the Market Abuse Directive.

- e) the extent to which orders to trade given or transactions undertaken are concentrated within a short time span in the trading session and lead to a price change which is subsequently reversed;
  - f) the extent to which orders to trade change the representation of the best bid or offer prices in a wholesale energy product admitted to trading on a trading venue, or more generally the representation of the order book available to market participants, and are removed before they are executed;
  - g) the extent to which orders to trade are given or transactions are undertaken at or around a specific time when reference prices, settlement prices and valuations are calculated and lead to price changes which have an effect on such prices and valuations.
- 82 The following non-exhaustive list of signals, which should not necessarily be deemed in themselves to constitute market manipulation, may be taken into account when transactions or orders to trade are examined by persons professionally arranging transactions related to the employment of fictitious devices or any other form of deception or contrivance<sup>10</sup>:
- a) whether orders to trade given or transactions undertaken by persons are preceded or followed by dissemination of false or misleading information by the same persons or persons linked to them;
  - b) whether orders to trade are given or transactions are undertaken by persons before or after the same persons or persons linked to them produce or disseminate research or recommendations which are erroneous or biased or demonstrably influenced by material interest.

### 3.2.3 Obligations of persons professionally arranging transactions

- 83 Any person professionally arranging transactions in wholesale energy products who reasonably suspects that a transaction might breach Article 3 or 5 of REMIT shall notify the competent NRA without further delay of all relevant information available. Where not all the relevant information is available at the time of notification, the notification shall include at least the reasons why the notifying persons suspect that the transaction might constitute insider dealing or market manipulation. All remaining information shall be provided to the competent authority as soon as it becomes available.

<sup>10</sup> Concerning wholesale energy products which are financial instruments, see Article 5 of implementing Directive 2003/124/EC on the Market Abuse Directive.

### 3.3 The Agency's market monitoring strategy

<sup>84</sup> Whilst the Agency is responsible for the monitoring of wholesale energy markets at pan-European level, the NRAs may monitor trading activity at national level. Where the Agency suspects that there has been a breach of the provisions in REMIT, it has the power to request information from NRAs, to request NRAs to commence an investigation, and to establish and coordinate investigatory groups in case the suspected breach has cross-border impacts. However, the Agency can only make such requests to NRAs on the basis of initial assessments or analysis. Where an NRA has reasonable grounds to suspect a breach of the provisions in REMIT, it shall without delay inform the Agency. The role of the Agency and NRAs with regards to market monitoring under REMIT is described in Figure 17.

■ Figure 17: The role of the Agency and NRAs in market monitoring under REMIT

	ACER	NRAs
Article 7	Shall monitor all trading activities in wholesale energy products to detect and prevent trading based on inside information and market manipulation.	Shall cooperate at regional level with ACER in carrying out the monitoring of wholesale energy markets. May monitor trading activity in wholesale energy products at national level, in cooperation with ACER and other NRAs at regional level.
Article 16	Shall have the power, where, <i>inter alia</i> on the basis of initial assessments or analysis, it suspects that there has been a breach of REMIT a) to request information from NRAs b) to request to commence an investigation and to take appropriate action if applicable c) establish and coordinate an investigatory group with concerned NRAs in case of cross-border impacts	Shall without delay inform ACER in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out A NRA receiving a request under Article 16(4)(a) or (b) shall immediately take the necessary measures in order to comply with that request.
Article 13		Shall ensure that the prohibitions of insider trading and market manipulation and the obligation to publish inside information are applied.

<sup>85</sup> On the basis of the legal framework provided in Articles 7, 13 and 16 of REMIT, in 2012, the Agency began to outline its market monitoring strategy under REMIT.

<sup>86</sup> An important component of the monitoring strategy is to describe the lifecycle of a market monitoring case under REMIT, i.e. the Agency's activities during the different monitoring phases, as this would bring clarity to both the Agency and NRAs when performing its monitoring tasks under REMIT. During 2012, the Agency developed a first high level description of how market monitoring cases under REMIT will be dealt with by the Agency.

<sup>87</sup> The Agency's market monitoring strategy under REMIT will be further developed in the course of 2013.

### 3.3.1 Ex-officio cases dealt with by the Agency

<sup>88</sup> Ex-officio cases were limited in number in 2012 given the limited data available to the Agency before the systematic data collection is implemented on the basis of the Commission's implementing acts. However, the Agency already opened ex-officio cases on the basis of information provided by stakeholders. The following flowchart shows the process of a typical ex-officio case where the matter is dealt with through the Agency's administrative powers under REMIT:

■ Figure 18: The Agency's activities during the lifecycle of a market monitoring case under REMIT for ex-officio cases



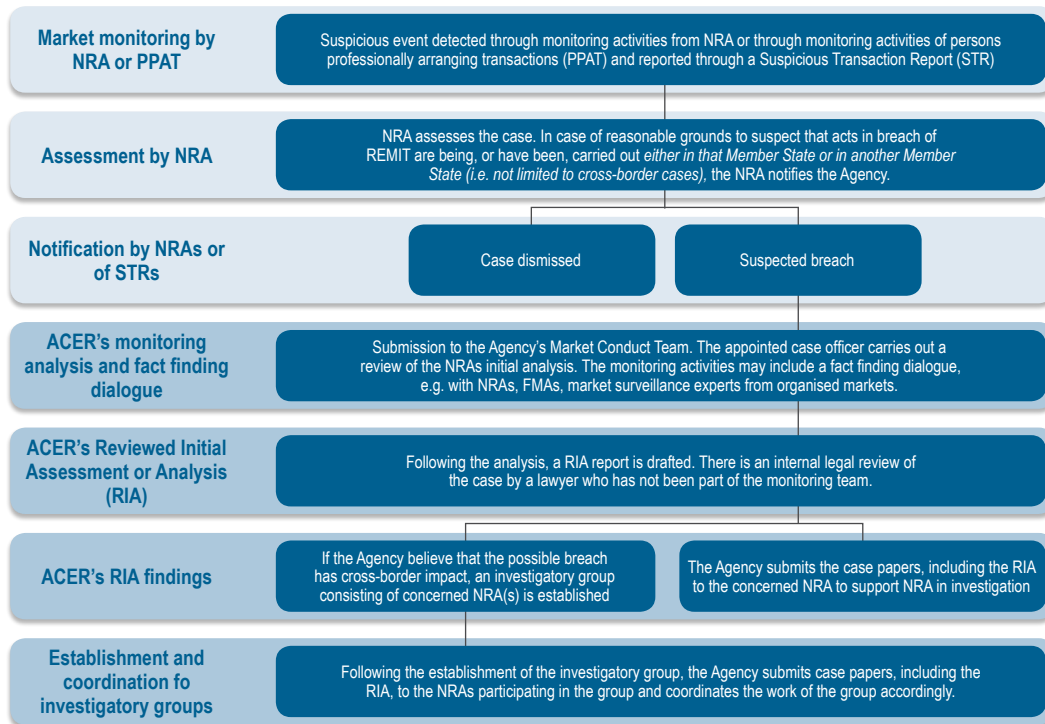
<sup>89</sup> The flowchart above illustrates, in a step-by-step manner, the activities of the Agency during the lifecycle of an ex-officio market monitoring case under REMIT. In the scenario described in the flowchart, a suspicious event is detected by the Agency during its day-to-day market monitoring or is brought to the Agency's attention through a complaint from a market participant or third party<sup>11</sup>. At this point, a case officer is appointed from the Market Surveillance and Analytics Team in the Agency's Market Monitoring Department, who will be responsible for the preliminary assessment of the suspicious event. Following analysis of the relevant data using the Agency's dedicated market monitoring software, a Preliminary Initial Assessment (PIA) note is prepared. If the preliminary initial assessment concludes that there are no grounds for suspecting a breach of REMIT, the case is dismissed. In case a breach of the provisions in REMIT cannot be ruled out on the basis of the PIA, the case is forwarded to the Market Conduct Team in the Agency's Market Monitoring Department for further analysis. The further analysis may include fact-finding dialogue with NRAs, national financial authorities or surveillance experts from organised market places. During the further analysis, an internal legal review of the case is carried out by a lawyer from the Legal and Policy Team in the Agency's Market Monitoring Department who has not been part of the monitoring team. Following additional fact finding and an internal legal review of the case, a Reviewed Initial Assessment (RIA) note is drafted. On the basis of the RIA, the Agency either dismisses the case or finds reason to suspect a breach of the provisions in REMIT. In the latter case, the Agency will notify the case to the competent NRA, together with relevant documentation regarding the suspected breach.

<sup>11</sup> Suspicious events may also be brought to the Agency's attention through so called Suspicious Transactions Reports (STR) submitted by persons professionally arranging transactions in accordance with Article 15 of REMIT or notified by NRAs in accordance with Article 16(2) of REMIT.

3.3.2 Notifications through NRAs, FMAs or other competent authorities

- 90 According to Article 16(2) of REMIT, NRAs are obliged to inform the Agency without delay in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of the provisions in REMIT are being, or have been, carried out either in that Member State or in another Member State. This notification obligation shall enable the Agency to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. This is why the notification obligation applies regardless of whether the case has a cross-border impact.
- 91 In addition to NRAs, according to Article 16(3)(c) of REMIT, the competent financial market authority of a Member State also has a notification obligation towards the Agency and ESMA. The notification obligation applies where the competent financial market authority of a Member State has reasonable grounds to suspect that acts in breach of Articles 3 and 5 of REMIT are being, or have been, carried out on wholesale energy products in another Member States.
- 92 The following flowchart shows the process of a typical notified case where the matter is dealt with through the Agency's administrative powers under REMIT:

■ Figure 19: The Agency's activities during the lifecycle of a market monitoring case under REMIT for notified cases



- 93 The flowchart above illustrates, in a step-by-step manner, the activities of the Agency during the life-cycle of a notified case under REMIT. Apart of the Agency's PIA findings, the same scenario applies than for ex-officio cases described above.

### 3.3.3 Establishment and coordination of investigatory groups

- <sup>94</sup> In case the suspected breach has cross-border impact, the Agency will establish and coordinate an investigatory group consisting of representatives of concerned NRAs to investigate whether REMIT has been breached and in which Member State the breach took place. Where appropriate, the Agency may also request the participation of representatives of the competent financial authority or other relevant authority in the investigatory group.



## 3.4 Case overview

<sup>95</sup> Due to the fact that data collection under REMIT did not take place in 2012, the Agency relied on notifications of suspected breaches of REMIT from NRAs and from persons professionally arranging transactions and on public sources for its market monitoring activities. This section aims to provide a brief overview of the cases concerning potential breaches of the provisions in REMIT that were taken up by the Agency in 2012. The Agency normally does not comment on whether it is reviewing a case, but does provide the following statistics on case reviews and a description of illustrative case reviews closed with no sanctions. This will also be done in future annual reports on the Agency's REMIT activities.

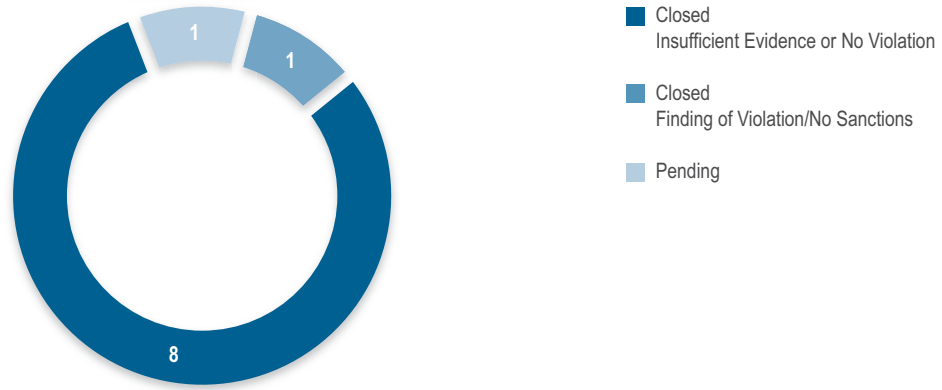
### 3.4.1 Statistics on case reviews

<sup>96</sup> In 2012, a total of 10 cases of potential breaches of the provisions in REMIT were reviewed by the Agency:

- One case related to both potential non effective disclosure of inside information according to Article 4(1) of REMIT and potential insider trading according to Article 3(1) of REMIT. The case was brought to the Agency's attention through a notification from a competent NRA. Since the case potentially had cross-border impact, the Agency established and coordinated an investigatory group consisting of all concerned NRAs. The competent NRA's review led to the conclusion that the relevant inside information was not disclosed in a timely manner and that the market participant therefore was in possession of inside information when carrying out trading activities at day-ahead and intraday markets. The market participant may have applied the exemption in Article 3(4)(b) of REMIT, but since it did not comply with the reporting obligation of this exemption, the market participant was formally in breach of Article 3 of REMIT. However, in the absence of sanctioning rules at national level and since no actual price effect of the trade could be concluded, the market participant was informed on how to improve its compliance with REMIT requirements and only a statement of breach was issued. There were five additional cases related to potential non-effective disclosure of inside information according to Article 4(1) of REMIT. Two of these cases were taken up either by the Agency or the relevant NRA because of notifications of delayed disclosure of inside information and three of the cases were taken up by the Agency following stakeholder contacts. In all these cases, the Agency worked with the concerned NRA which in turn contacted the concerned market participant. All cases were closed without a breach of REMIT being found.
- Four cases related to potential breach of the prohibition of market manipulation according to Article 5 of REMIT. Three cases were brought to the Agency's attention through notifications of NRAs or persons professionally arranging transactions in accordance with Articles 15 and 16 of REMIT respectively, while one case was initiated by the Agency after analysing information in the media. The Agency's activities consisted of coordination of the concerned NRAs. One of the cases had potential cross-border impact and therefore required the establishment and coordination of an investigatory group consisting of all concerned NRAs. Following the review, three of the cases were closed by the competent NRAs without a breach of REMIT being found. One case is still ongoing and was notified to ESMA and the competent FMA.
- The Agency has received some tips from stakeholders concerning specific market participants' behaviour, but no breach of REMIT could be identified. Instructions on how to report suspicious behaviour to the Agency can be found on the Agency's website.

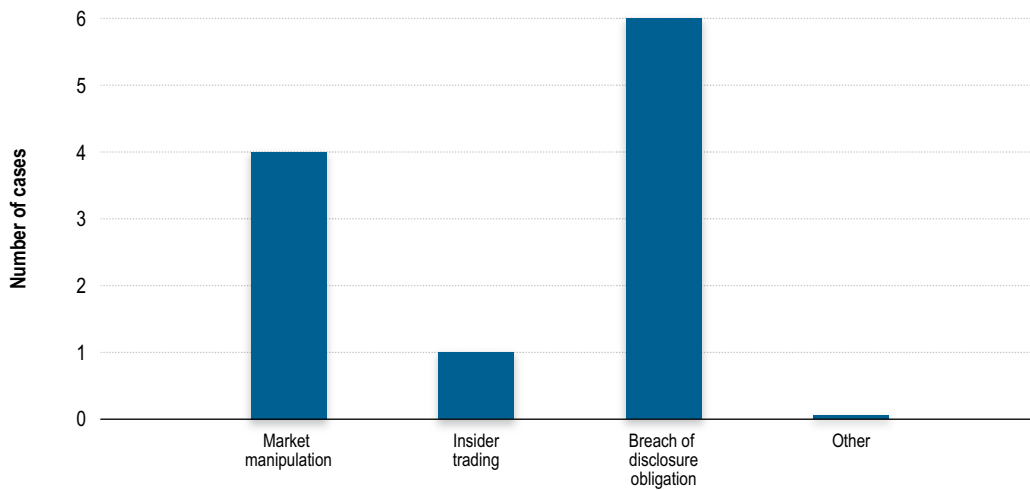
97 The following chart shows the disposition of case reviews during 2012:

■ Figure 20: Disposition of case reviews by 31 December 2012



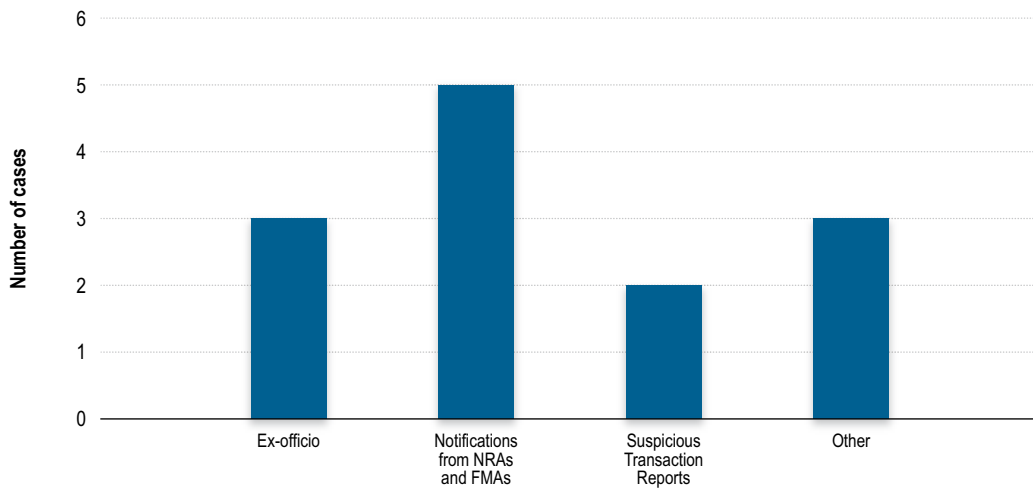
98 The following charts illustrate the nature of the conduct at issue and the case origin for those cases that were closed without sanction as well as the Agency's case activities in 2012<sup>12</sup>:

■ Figure 21: Types of alleged violation of reviewed cases closed without sanction in 2012

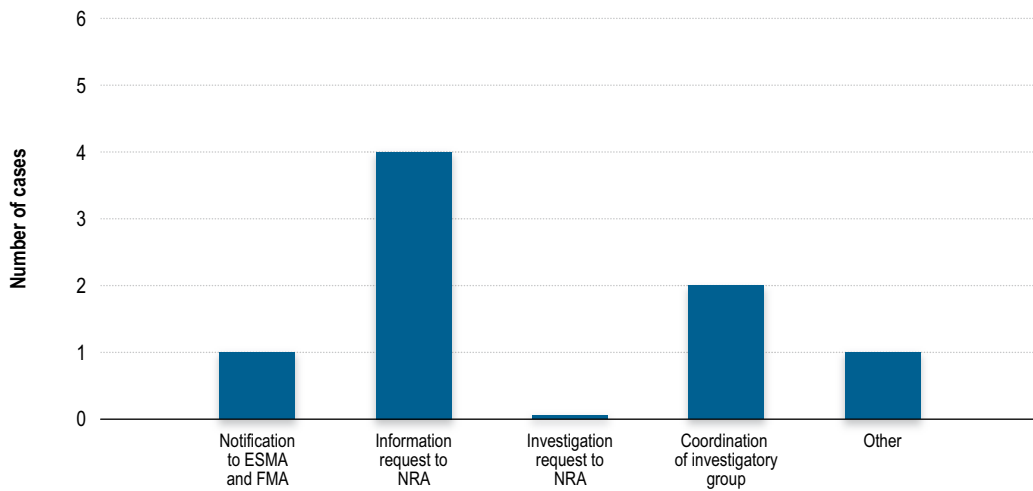


12 Please note that cases may violate several types of market abuse, that the same case may have reached the Agency through several channels and that the Agency may have undertaken several case activities per case.

■ Figure 22: Case origin of reviewed cases closed in 2012



■ Figure 23: Case activities by the Agency



99 It is expected that the number of cases under review will grow in the following years, in particular following the start of systematic data collection on the basis of the implementing acts.

### 3.4.2 Illustrative case reviews closed with no sanction

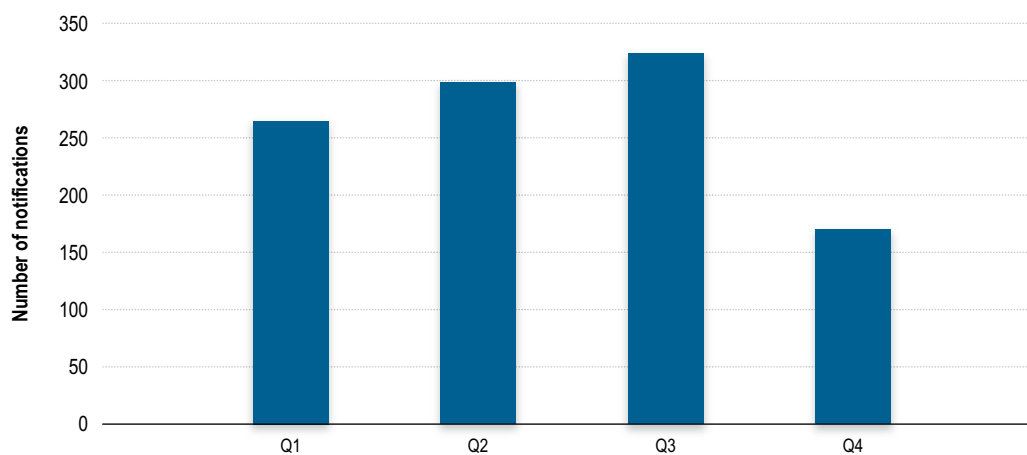
- <sup>100</sup> In a continuing effort to promote transparency while supporting the compliance efforts of market participants, the following illustrations describe selected instances where the Agency's staff undertook a review, but took no further action. The following information is intended to provide guidance to the public and to market participants as to why the Agency chose not to pursue further action, while preserving the non-public nature of the case reviews. This information also elucidates the close cooperation between the Agency and NRAs and the crucial role NRAs play in the investigation and enforcement of REMIT.
- <sup>101</sup> Disclosure of inside information and insider trading: The Agency was repeatedly contacted regarding insufficient information published on events generating inside information. This concerned *inter alia* Urgent Market Messages (UMM) from market participants on company websites. In most cases, requests were considered as Q&As and not considered as cases. However, when a request was considered as a case, the Agency reviewed the relevant UMMs and requested additional background information about the market participant's trading behaviour and potential price effects either from the NRA concerned or from a competent market surveillance team from an organised market place concerned if considered useful. In most cases, the Agency found that the incident was not in conflict with REMIT. In the cases where the incident, indeed, was in conflict with REMIT, it had no effect on the market. In the latter case, it was normally agreed with the competent NRA that it identifies the elements of compliance that should be improved by the market participant in order to better meet REMIT requirements in future and the review of the case at stake was closed without further action.
- <sup>102</sup> Market manipulation: In view of the development of electricity prices in the Member State concerned in early 2012 and press reports claiming that speculation of electricity traders nearly caused a blackout and significant price peaks, the Agency contacted the relevant NRA and requested background information to be able to assess a potential breach of the provisions in REMIT. According to the information received, the NRA assessed the case as potentially breaching national security of supply provisions. However, no breach of the provisions in REMIT was detected. The Agency therefore closed the case.

### 3.4.3 Notifications of delayed disclosure of inside information

<sup>103</sup> Article 3(4)(b) and Article 4(2) of REMIT provide for exemptions from the obligation to timely publish inside information and from the prohibition to trade on this information before it is published in a number of specified cases. In all these cases, however, the relevant information should be reported to the Agency and the relevant NRA without delay. In order to assist those market participants who are subject to the obligations in Article 3(4)(b) and Article 4(2) of REMIT, the Agency has developed a standard notification format, based on the experiences in financial markets, and recommended its adoption by all NRAs. The relevant electronic format was published on the ACER website on 28 December 2011.

<sup>104</sup> The following chart gives an overview of the 1 058 notifications of delayed disclosure of inside information received in 2012 from across Europe:

■ Figure 24: Quarterly breakdown of notifications of delayed disclosures of inside information



<sup>105</sup> The Agency will review the notification formats for delayed disclosure of inside information in 2013 and monitor the notifications received more intensively.

### 3.5 Assessment of the operation and transparency of different categories of market places and ways of trading

#### 3.5.1 Introduction

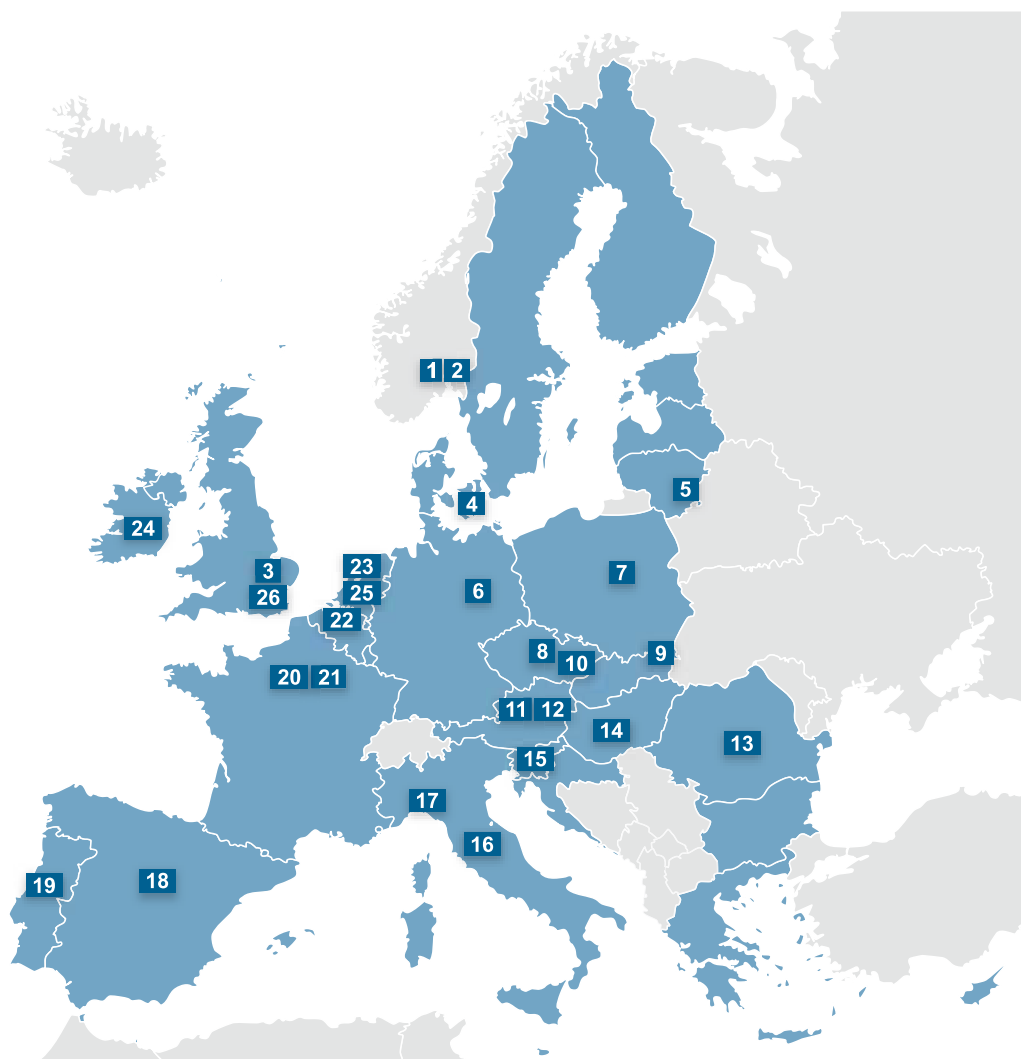
- <sup>106</sup> According to Article 7(2) of REMIT, the Agency shall annually assess the operation and transparency of different categories of organised market places and ways of trading.
- <sup>107</sup> Providing a clear picture of the trading aspects of wholesale electricity and gas markets in Europe will shed light on the current barriers to the development of more liquid and transparent markets.
- <sup>108</sup> However, as data available to the Agency is very limited at this stage, ahead of the systematic data collection on the basis of the Commission's implementing acts, the following assessment is primarily based on public sources and secondary information. Having this in mind, the assessment in this year's annual report is limited in scope and mostly descriptive.
- <sup>109</sup> In future annual reports on its activities under REMIT, the Agency will go into more detail concerning the operation and transparency of different categories of organised market places and ways of trading. On the basis of data collected under REMIT and on experiences from NRAs, organised market places and other relevant stakeholders, the Agency intends to further analyse the trends in market participants' trading behaviour and any concerns market participants may raise as regards to the transparency and integrity of wholesale energy markets across the Union
- <sup>110</sup> In parallel to the Agency's annual report on its activities under REMIT, the Agency publishes an annual report on the results of its monitoring of the Internal Electricity and Natural Gas Markets, prepared in accordance with Article 11 of the ACER Regulation (the "Market Monitoring Report"). The objective of the Market Monitoring Report is to assess how energy markets work and how they can perform more efficiently, to the benefit of European energy consumers. Moreover, this report aims to identify any possible barriers to the completion of the Internal Energy Market by 2014 and to suggest to the European Parliament and Commission how to remove them. Both annual reports will complement and refer to each other where useful.

#### 3.5.2 Assessment of the operation of different categories of market places

##### 3.5.2.1 Introduction

- <sup>111</sup> Trading in wholesale energy markets is done via different categories of market places, namely via organised market places (e.g. energy exchanges) or over the counter ("OTC"). OTC trading is either purely bilateral or carried out via a broker. Whilst transactions carried out at energy exchanges are anonymous and screen-traded, with brokers, transactions can be handled via voice and screen.
- <sup>112</sup> Energy exchanges have been in place since 1990. Their core products include day-ahead and intra-day spot contracts (physical market), derivative contracts such as futures, swaps and options (financial market) and OTC clearing in forward markets.

■ Figure 25: Overview of major organised market places in Europe



Source: Derived from European energy exchanges

- |   |  |
|---|--|
| <b>1</b> NASDAQ OMX Commodities                         | <b>14</b> Hungarian Power Exchange                           |
| <b>2</b> Nord Pool Spot                                 | <b>15</b> BSP Regional Energy Exchange (SouthPool)           |
| <b>3</b> N2EX   | <b>16</b> GME, Gestore dei mercati energetici S.p.a.         |
| <b>4</b> Gaspoint Nordic                                | <b>17</b> Borsa italiana                                     |
| <b>5</b> BaltPool UAB                                   | <b>18</b> OMIE, Operador del Mercado Ibérico de Energía S.A. |
| <b>6</b> EEX, European Energy Exchange                  | <b>19</b> OMIP, Operador de Mercado Ibérico de Energía S.A.  |
| <b>7</b> PolPX, Towarowa Gielda Energii Sa              | <b>20</b> Powernext SA                                       |
| <b>8</b> Operátor trhu s elektrinou a.s.                | <b>21</b> EPEX Spot SE                                       |
| <b>9</b> Organizátor krátkodobého trhu s elektrinou     | <b>22</b> Belpex SA  |
| <b>10</b> PXE, Power Exchange Central Europe            | <b>23</b> APX  |
| <b>11</b> EXAA, Energy Exchange Austria                 | <b>24</b> SEMO, Single Electricity Market Operator           |
| <b>12</b> CEGH, Central European Gas Hub                | <b>25</b> ICE Endex  |
| <b>13</b> Operato Pietei de Energie Electricia OPCOM SA | <b>26</b> ICE Futures Europe                                 |

- 113 Electricity and natural gas markets involve both physical and financial elements. The physical markets include the trading of and payment for the physical commodity, while the financial markets include the buying and selling of financial products on natural gas and electricity. Physical products are contracts that involve a physical delivery of natural gas or electricity. Physical market participants act on the market to make or take delivery of the commodity. Financial products do not involve the delivery of gas or electricity; these products only involve the exchange of money. Some of the energy exchanges within the EU operate both in the physical and financial markets, whilst other exchanges operate in only one of the two market segments.
- 114 The table below illustrates the main market segments in physical and financial wholesale energy markets.

■ Table 2: Market segments of wholesale energy markets

Market Segments	
Physical markets	Financial markets
Balancing markets	Derivatives markets
Spot markets	<ul style="list-style-type: none"> <li>• Financial forwards</li> <li>• Futures</li> <li>• Swaps</li> <li>• Options</li> </ul>
<ul style="list-style-type: none"> <li>• Intraday or withinday products</li> <li>• Day-ahead products</li> <li>• Week-end, weekly and block products until the end of the ongoing month</li> </ul>	
Physical forward markets	

- 115 As regards balancing markets, there are a variety of national arrangements in place. There are regulatory regime differences across Member States, such as the differences in regulatory incentives to TSOs and/or market participants, costs allocation principles and variations in the treatment of intermittent resources. There is also a lack of harmonisation of market design such as methodologies for reserve and balancing pricing, imbalance settlement, procurement time horizons and nominations. Work is being done within the EU on how best to develop the so far disjointed, highly concentrated and diverse national balancing markets, into one robust integrated scheme accessible by all market participants.
- 116 Overall, the number of market participants in the European wholesale energy markets is expected to increase. Reasons for this include: (i) transparency makes energy markets more understandable, comprehensible and reliable which in turn encourages new entries from all types of market participant (producers, shippers and suppliers), and (ii) a higher degree of market integration between national and regional markets is likely to lead to an increase in market activity and larger number of trading participants compared to that of isolated markets. Consequently, increased overall trading and increased traded volumes is likely to open up for an increasing number of trading participants.



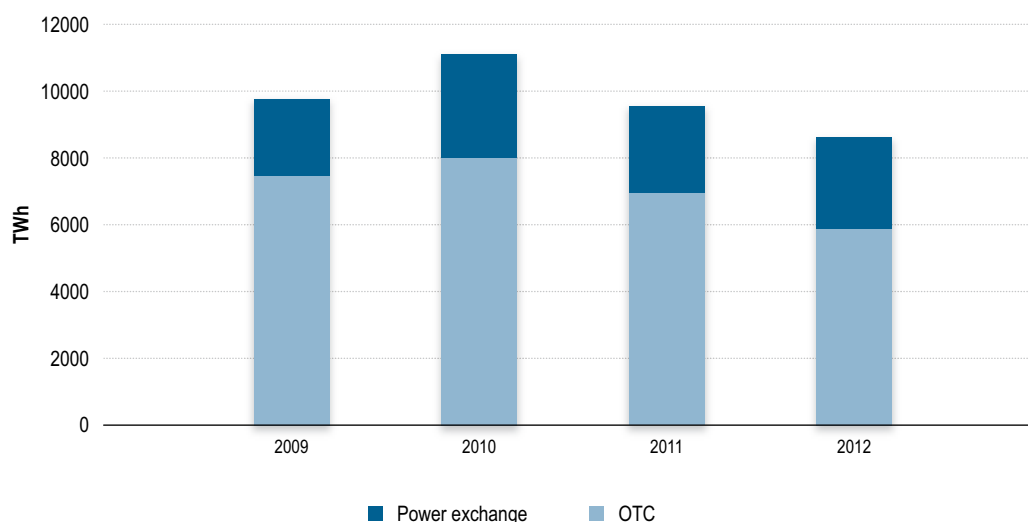
<sup>117</sup> Market participants acting on wholesale electricity markets are either physical participants (e.g. generators or suppliers) or financial participants. However, a clear distinction between those two roles is difficult, as physical market participants also may trade speculative while financial participants also may trade physical contracts.

### 3.5.2.2 Wholesale electricity markets

#### Market structure and traded volumes

<sup>118</sup> According to estimates by Prospex Research, the majority of volumes traded in European wholesale electricity markets are traded OTC<sup>13</sup>. In 2012, OTC trading amounted to 5 825 TWh, corresponding to 68% of the total amount of power traded in Europe. This was however a decrease by 18% compared to 2011. 2 709 TWh were traded on exchanges, either in spot contracts or in forward contracts. Total trading volumes, including exchanges and OTC, decreased by 14% compared to 2011.

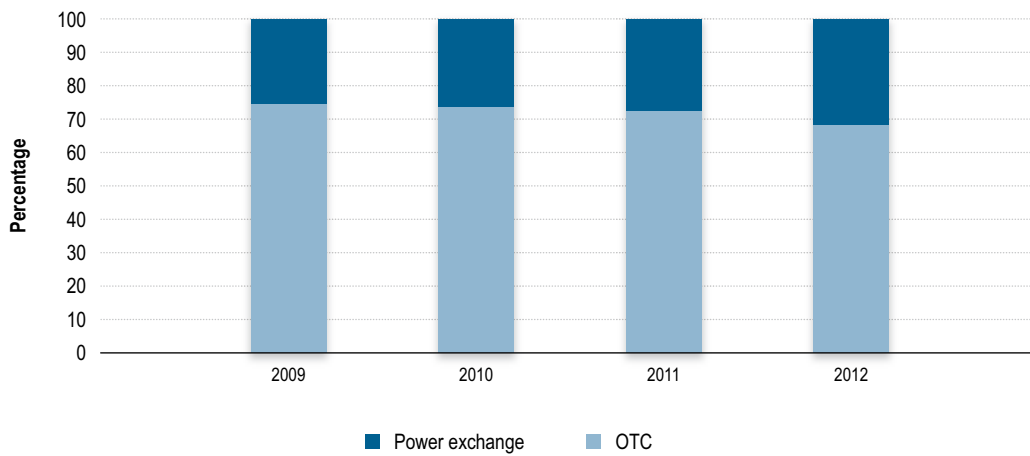
■ Figure 26: Estimated OTC trade vs. exchange trade in Europe, 2009-2012



Source: Prospex Research, in TWh

<sup>13</sup> "European Power Trading 2013". Copyright Prospex Research Ltd. 2013. All Rights Reserved. This content may not be copied, reprinted, published, transmitted, transferred, disseminated or distributed in any manner without prior written approval by Prospex Research Ltd.

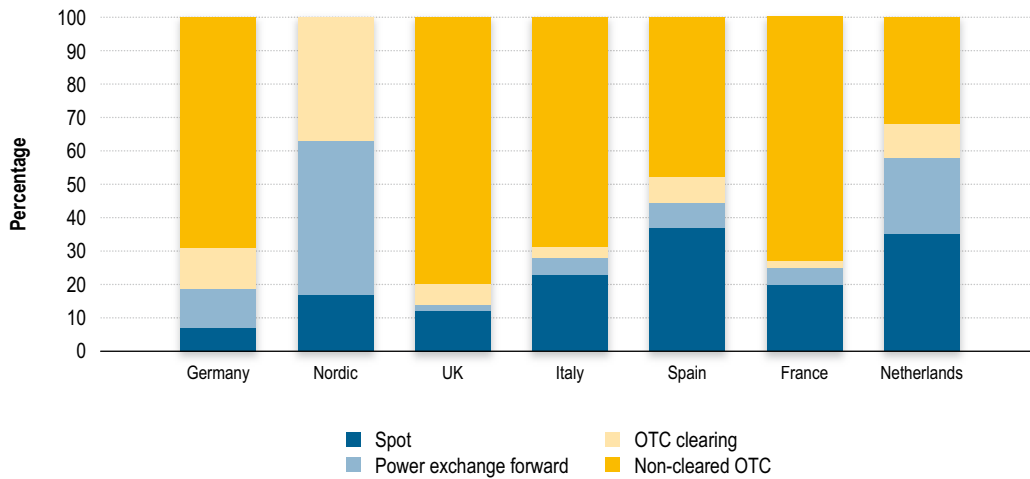
■ Figure 27: Estimated OTC trade vs. exchange trade in Europe, 2009-2012



Source: Prospex Research, in percent

119 The structure of electricity markets varies widely within Europe. For example, in the Nordic power market, exchange trading is very common and there are almost no non-cleared OTC trades, whilst in the UK, non-cleared OTC trading is the most common type of trade. Non-cleared OTC trade also dominates in Germany, Italy and France. Forwards, on the other hand, is much more common in the Nordic market than any other market. Spot trading makes up a sizeable share in some markets, such as Spain and Italy. The figure below illustrates the market structure in the major European power markets during 2012.

■ Figure 28: Structure of major European power markets, 2012



Source: Prospex Research

120 In terms of OTC clearing, the Nordic and the German markets are the largest ones. The Nordic market traded 736 TWh OTC in 2012, followed by 466 TWh on Germany's EEX Power Derivatives market. Volumes at UK's and southern European markets grew (38 TWh N2EX UK prompt; 28 TWh OMIP Iberia; 25 TWh GME Italy) while volumes at French (5 TWh) and Dutch (14 TWh) markets decreased compared to the previous year.

- <sup>121</sup> A remarkable share of spot trading took place in the Spanish market (37% of total market volumes) and in the Netherlands (35%). The Nordic market is dominated by forward trades (46% of total market volumes). OTC clearing covers 37% of market volumes in the Nordic market, 12% in Germany and 10% in the Netherlands. The UK market is characterised by non-cleared OTC trading with 81% of total market volumes, France with 73%, Germany 70% and Italy 68%.
- <sup>122</sup> Overall, spot trading has been increasing in recent years. In 2012, spot volumes rose by 14% compared to 2011 to a historic peak of 1 167 TWh.
- <sup>123</sup> Nord Pool Spot's Nordic and Baltic market is by far the largest spot market in Europe. Nord Pool Spot has grown almost continuously for over a decade as more and more market participants have chosen to meet their short term requirements at the spot exchange. EPEX Spot's German and Austrian market comes second in Europe in terms of spot volumes. Also EPEX Spot's market has grown steadily over the last decade. In 2012, EPEX Spot was further boosted by Germany's decision to require system operators to use the exchange for the onward sale of their obligatory purchases of substantial renewables output. OMIE's Spanish market was Europe's third largest spot exchange. However, over the last five years volumes have dropped by a fifth, partly as a result of the economic crisis. The table below shows the traded spot volumes on a sample of European power exchanges in 2012.

■ Table 3: Spot volumes traded on power exchanges in Europe in 2012

Market place	Trading volumes 2012 (TWh)	Change 2011-2012 (%)
Nord Pool Spot	334	13%
EPEX Spot	321	9%
OMIE	228	6%
GME	178	-1%
N2EX	95	-
APX	69	21%
SEMO	33	-1%
PolPX	19	-3%
Belpex	17	37%
OTE	12	21%
OPCOM	11	22%
EXAA	9	24%
OKTE	9	30%
HUPX	6	67%

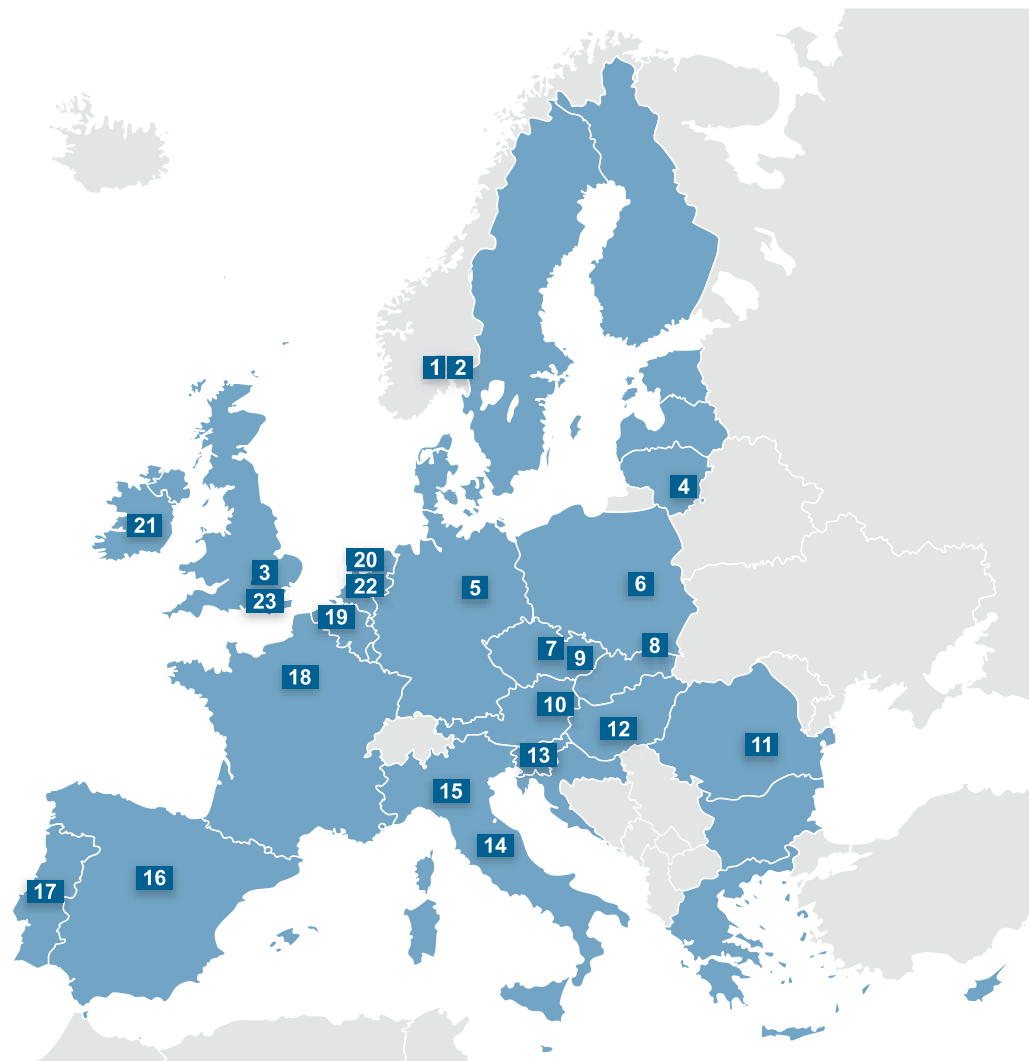
Source: *Prospex Research and European energy exchanges*

- <sup>124</sup> Like spot markets, European derivatives exchanges varies greatly in terms of scale and growth rates. The biggest forward markets during 2012 were the Nordic market and Germany. The Nordic market, run by NASDAQ OMX Commodities, continued its market leading position with volumes of 927 TWh. In Germany, the second largest forward market, 462 TWh (445 TWh EEX, 17 TWh Nasdaq OMX) were traded. All other forward markets are much smaller, in terms of volumes.

## Power exchanges

- <sup>125</sup> The following figure illustrates the major electricity exchanges operating within Europe during 2012.

■ Figure 29: Overview of major organised market places for electricity in Europe



Source: European energy exchanges and the Agency

- |           |   |           |  |
|-----------|---|-----------|--|
| <b>1</b>  | NASDAQ OMX Commodities                        | <b>13</b> | BSP Regional Energy Exchange (SouthPool)                           |
| <b>2</b>  | Gaspoint Nordic                               | <b>14</b> | Gestore dei mercati energetici S.p.a.                              |
| <b>3</b>  | N2EX  | <b>15</b> | Borsa italiana   |
| <b>4</b>  | BaltPool UAB                                  | <b>16</b> | OMIE, Operador del Mercado Ibérico de Energía (Polo Español) S.A.  |
| <b>5</b>  | EEX, European Energy Exchange                 | <b>17</b> | OMIP, Operador de Mercado Ibérico de Energía (Polo Portugués) S.A. |
| <b>6</b>  | Towarowa Gielda Energii Sa                    | <b>18</b> | EPEX Spot  |
| <b>7</b>  | Operátor trhu s elektrinou a.s.               | <b>19</b> | Belpex SA  |
| <b>8</b>  | Organizátor krátkodobého trhu s elektrinou    | <b>20</b> | APX  |
| <b>9</b>  | PXE, Power Exchange Central Europe            | <b>21</b> | SEMO, Single Electricity Market Operator                           |
| <b>10</b> | EXAA, Energy Exchange Austria                 | <b>22</b> | ICE Endex  |
| <b>11</b> | Operato Pietei de Energie Electricia OPCOM SA | <b>23</b> | ICE Futures Europe   |
| <b>12</b> | HUPX, Hungarian Power Exchange                |           |  |

Cross-border trade

126 Cross-border trade is constantly increasing. The figure below show the physical energy flows during 2012<sup>14</sup>. Italy is the largest net importer in Europe followed by Finland, the Netherlands and Great Britain. Largest net exporter is France followed by Germany, Sweden and Norway. Germany, Switzerland and Austria are the countries with largest volumes of both inflows and outflows.

■ Figure 30: Physical electricity flows



Source: ENTSO-E

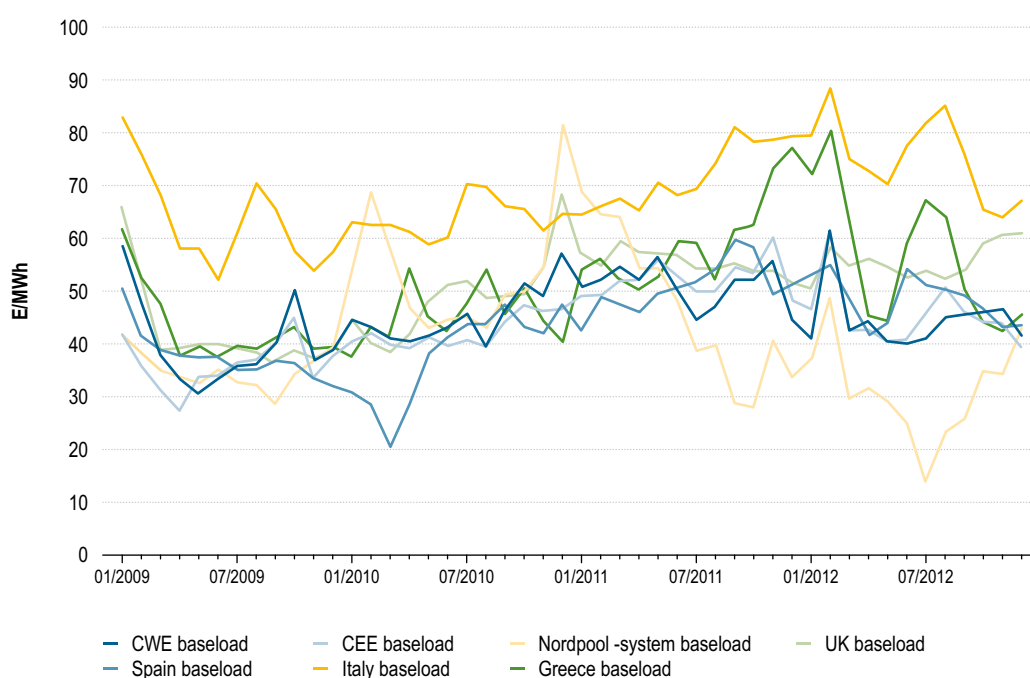
14 Memo 2012, see <https://www.entsoe.eu/publications/general-publications/memo-entso-e-facts-figures/>

## Prices

127 The European government debt crisis caused a decline of wholesale power prices in almost all Western European markets in 2012. Traders booked lower volumes to minimise the risk, some bank traders left the sector. The utility sector also influenced the volume declines due to more risk averseness based on economic problems, low power prices, high fuel prices and rapid growth of renewables destabilising the position of conventional operations.

128 The figure below illustrates the development of the electricity spot prices from 2009 to 2012.

■ Figure 31: Comparison of monthly electricity baseload prices in regional electricity markets



Source: DG Energy, Quarterly Report, Volume 5, 2012.

129 Although there has been a perceivable price convergence among different regions across Europe in recent years, there were some exceptional periods during 2012 when prices diverged quite significantly.

130 Power prices in Italy were higher than in other regions during the observed period, averaging at 75 EUR/MWh, mainly due to a high share of highly priced gas and oil in the country's power generation mix and due to the lack of sufficient electricity interconnections with neighbouring countries. Prices in the Nordic market varied in wide ranges during the last four years, primarily owing to the decisive role of hydro-based power generation in this region. Wholesale electricity prices in the Nordic market ranked lowest across the Union in 2012 at around 30 EUR/MWh. In the Central Western Europe (CWE) region, renewable power generation in Germany and nuclear availability in France were important factors in determining power prices. In the Iberian power mix, hydro availability plays an important role; however, during the last couple of years wind and solar based generation significantly impacted power prices in the region, partly replacing gas-fired generation. Power prices in Central and Eastern Europe were impacted by the CWE market and other factors, such as hydro supply in the Balkans. Power prices in the UK are normally higher than in the CWE region, given that the share of both renewable and nuclear generation is lower in the country's power mix than on the continent, while natural gas represents a significant share<sup>15</sup>.

15 DG Energy, Quarterly Report on European Electricity Markets, Volume 5, 2012.

#### Box 4: The increasing convergence of electricity spot markets through market coupling

Market coupling is the key instrument for the integration of EU wholesale power markets. Market coupling refers to the integration of two or more electricity markets from different areas through an implicit cross-border allocation mechanism. Instead of explicitly auctioning the cross-border transmission capacities among the market participants, the capacities are implicitly made available on the power exchanges of the various areas. The purpose of market coupling is to maximise the economic welfare of all players. The mechanism aims to enable the free movement of electricity between the integrated markets.

In 2012, market coupling applied in the following power regions and among the following power exchanges: Central Western Europe (EPEX Spot (German-Austrian and France), Belpex (Belgium) and APX-ENDEX (Netherlands)), Nordic region (Nord Pool Spot (Norway, Sweden, Finland, Denmark, Estonia, Lithuania)), Central-Eastern Europe (OTE (Czech Republic and Slovakia) and HUPX (Hungary)), South Western Europe (OMIE (Spain and Portugal)) and Central-South Europe (GME (Italy) and Borzen-BSP SouthPool (Slovenia)).

Market coupling and wholesale price convergence is dealt with in more detail in the Agency's Market Monitoring Report.

#### Traded products

- <sup>131</sup> Products traded in wholesale electricity markets include both short term and long term physical products and short term and long term financial products. The contracts can either be standardised contracts, admitted to trading at organised market places, or non-standardised contracts traded OTC.
- <sup>132</sup> Physical products traded in wholesale energy markets range from hourly contracts traded in the intraday market to long term physical forwards. Derivatives are financial products whose value is dependent on the value of an underlying asset. There are several different kinds of derivatives contracts. The most common ones are futures, options and swaps.
- <sup>133</sup> The box below illustrates the key characteristics of some the more common wholesale electricity products admitted to trading at major organised market places within the EU. It is however important to note that market rules, product definitions and product descriptions vary between the various exchanges.

### Box 5: Overview of standardised wholesale electricity products admitted to trading at organised market places

<i>Type of product</i>	<i>Product description</i>
Day-ahead spot contracts	Contracts traded for physical delivery during the next day. Hourly contracts and flexible block contracts can be traded, subject to relevant market rules. Day-ahead spot prices are usually set in auctions, where market participants submit their bids until the closure of the call phase. Some power exchanges distinguish between Base load and Peak load contracts.
Base load contracts	Contracts for delivery from Monday to Sunday, usually 00.00-24.00.
Peak load contracts	Contracts for delivery Monday to Friday, usually between 08.00-20.00 or 08.00-18.00.
Intraday spot contracts	Contracts traded the same days as delivery. Market participants trade in the intraday market to correct imbalances they may have after the day-ahead trades. Intraday trading is usually carried out in continuous trading.
Physical forwards	Contracts for physical delivery at a specific time in the future at price determined when signing the contract. The day-ahead spot price at the point of time for delivery does not affect the contract.
Futures	Financial contracts with a physical underlying product where, at delivery date, the amount of money corresponding to the value of the underlying product is delivered at a predetermined price (contrary to physical forward, where the actual physical commodity is delivered).
Options	Contracts that offer the buyer the option or the right, but not the obligation, to buy or sell an asset at a pre-defined price at a specific time.



134 When trading OTC, so-called standard master agreements are often used that set out standard terms that apply to all the transactions entered into between the parties. Each time that a transaction is entered into, the terms of the master agreement apply automatically. The master agreement permits the parties to quickly negotiate future transactions or agreements, because they can rely on the terms of the master agreement, so that the same terms need not be repetitively negotiated.

135 The table below provides an overview of the different products offered at the various European power exchanges.

■ Table 4: Overview of traded products at European power exchanges

Power Exchange	Geographic market	Spot	Forward	Intraday	OTC clearing
NASDAQ OMX Commodities	Nordic Region, Germany, UK		x		x
Nord Pool Spot	Nordic region plus Baltic markets of Estonia and Latvia	x		x	
OMIE	Iberia	x		x	
APX	Belgium, Netherlands, UK	x		x	
EEX	Austria, France, Germany		x		x
EPEX Spot	Austria, France, Germany, Switzerland	x	x		
ICE ENDEX	Belgium, Netherlands, UK		x		x
EXAA	Austria, Germany	x			
GME	Italy	x	x	x	x
ICE Futures Europe	UK		x		x
OMIP	Iberia		x		x
SEMO	Republic of Ireland, Northern Ireland	x			
IDEX	Italy		x		x
N2EX	UK	x			x
PolPX	Poland	x	x		x
OTE	Czech Republic	x			
OKTE	Slovakia, Czech Republic, Hungary	x			
OPCOM	Romania	x			
Power Exchange Central Europe (PXE)	Czech Republic, Slovakia, Hungary		x		x
BSP Regional Energy Exchange (SouthPool)	Slovenia, Serbia	x			x
Belpex	Belgium	x		x	
Borsa Italia	Italy	x	x		
Balt Pool	Lithuania	x	x		
HUPX	Hungary	x	x		x

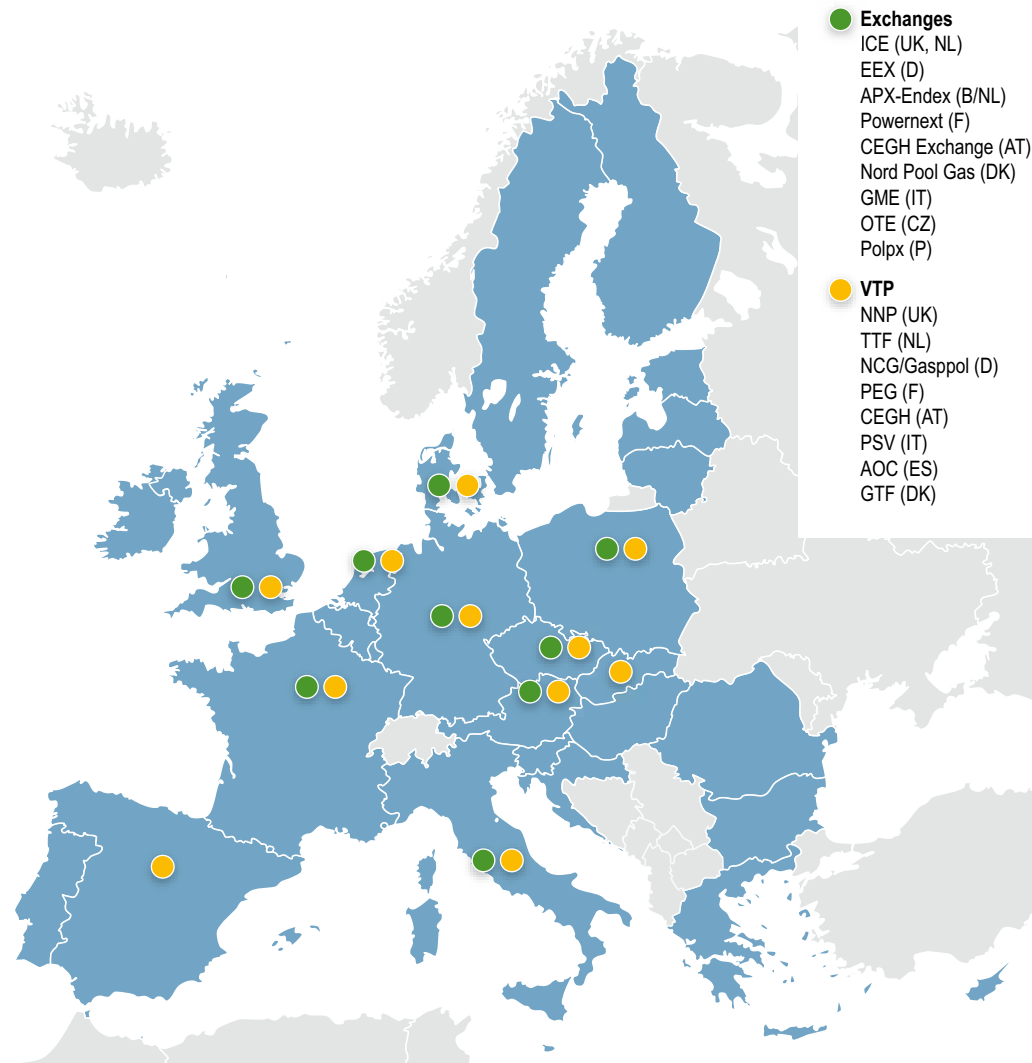
Source: Prospex Research and European energy exchanges

### 3.5.2.3 Wholesale natural gas markets

#### Market structure and traded volumes

<sup>136</sup> Even more than European electricity markets, European gas markets are dominated by OTC trading followed by exchange futures. The following figure illustrates the major gas trading points in 2012.

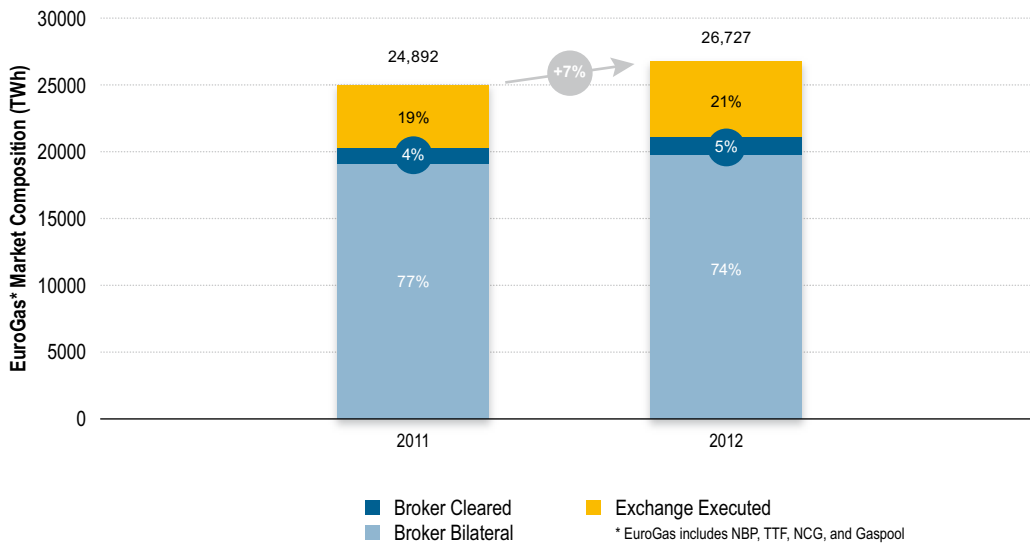
■ Figure 32: Major gas trading points in Europe



Source: Market sources and ACER

<sup>137</sup> In 2012, traded volumes increased by 7 % in total. The volumes traded OTC in relation to total amount of traded volumes in 2012 decreased.

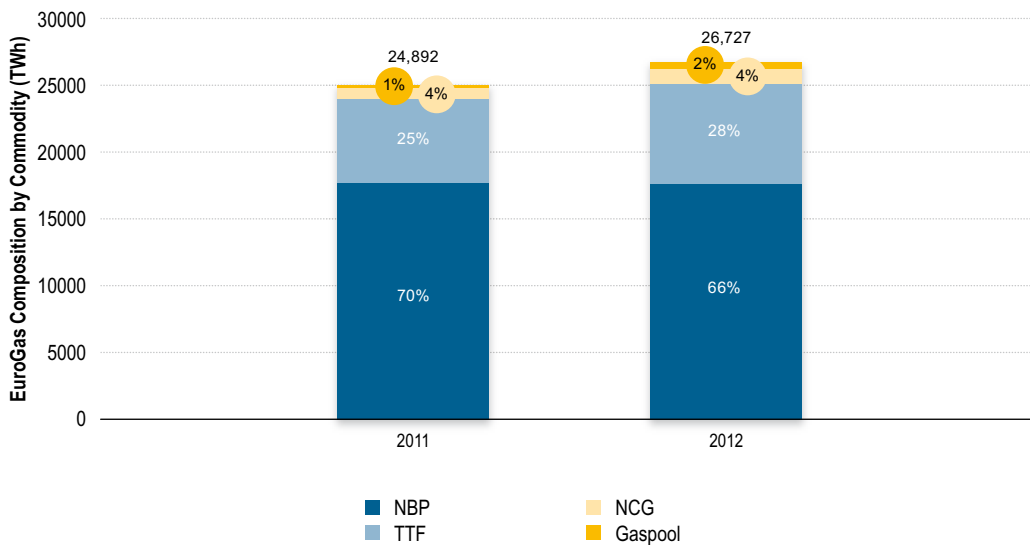
Figure 33: OTC trade vs. exchange trade, 2011-2012



Source: Trayport Euro Commodities Market Dynamics Report, Trayport/LEBA<sup>16</sup>

138 The figure below displays the proportion of volumes traded OTC at major gas hubs in Europe. NBP is with 66% traded volumes the biggest player in the OTC trade, followed by TTF and NGC.

Figure 34: OTC trade vs. exchange trade, per major gas hub 2011-2012



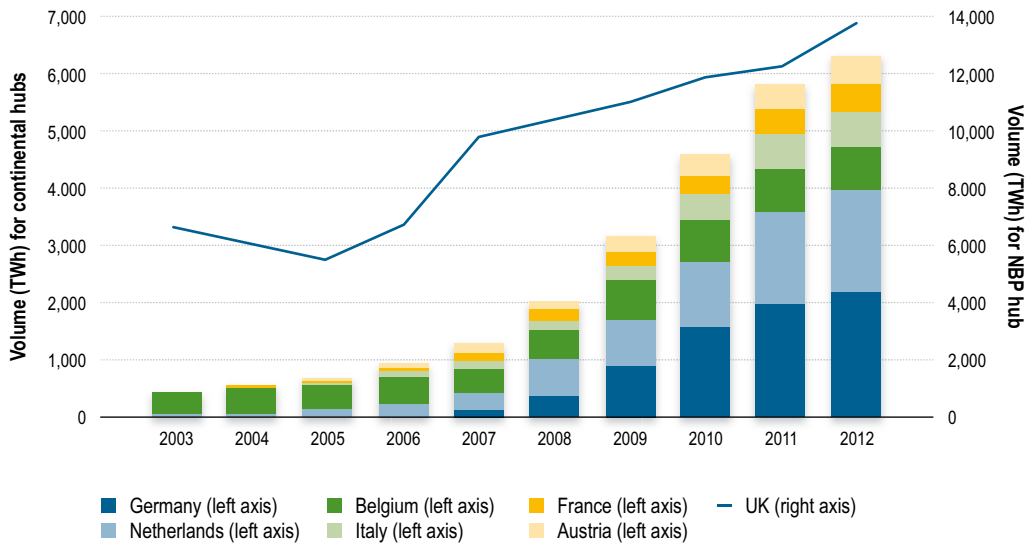
Source: Trayport Euro Commodities Market Dynamics Report, Trayport/LEBA

16 Source: Trayport Euro Commodities Market Dynamics Report. Copyright Trayport Ltd. 2013. All Rights Reserved. This content may not be copied, reprinted, published, transmitted, transferred, disseminated or distributed in any manner without prior written approval by Trayport Ltd.

139 The total volume of gas traded on European gas hubs was more than 20 000 TWh in 2012. The NBP (UK) and TTF (Netherland) represented more than 80% of that volume. Relative to 2011, the volumes of gas traded on EU hubs increased by 11%. Continental hubs (excluding the UK NBP) experienced an overall increase of 9%, which is considerably below the 27% increase registered in 2011, and even less than the 48% average yearly increase in traded volumes registered between 2005 and 2009. Thus the growth of traded volumes on continental European hubs in 2012 was not as impressive as in recent years. However, in 2011, according to the EC Quarterly Report, the volumes physically delivered on EU hubs represented 74% of the total natural gas demand in MS covered by those hubs (UK, NL, BE, DE, FR, AT and IT). For the first ten months of 2012, this proportion increased to 82%. This shows the increasing role of trading hubs as an instrument for exchange of natural gas ownership in the EU<sup>17</sup>.

140 The development of traded volumes on European gas hubs is displayed in the figure below.

■ Figure 35: Traded volumes on European gas hubs



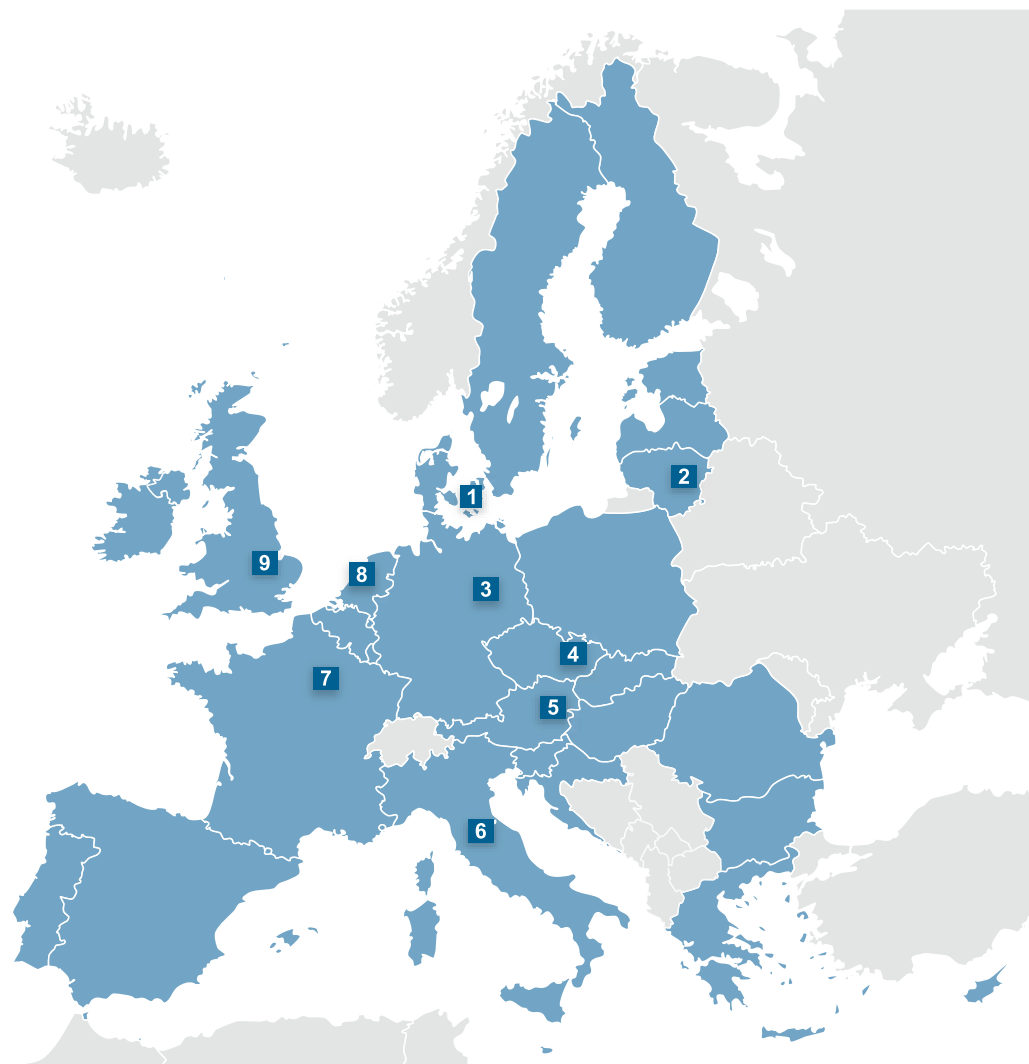
Source: DG Energy, Quarterly Report on European Gas markets, Volume 5, 2012.

17 DG Energy, Quarterly Report on European Gas Markets, Volume 5, 2012.

## Gas exchanges

<sup>141</sup> In European gas markets, eight exchange operators share the trading activity. Three among them (ICE Futures Europe based in London, APX-Endex based in Amsterdam, EEX based in Leipzig) offer gas trades for delivery in more than one national market. The other five exchanges offer trading in their own national markets. Almost all exchanges are not only restricted to gas trades, as they are active in other commodity markets, especially in the electricity market<sup>18</sup>. The gas trading points and the exchanges are displayed in the following figure.

■ Figure 36: Overview of major organised market places for natural gas in Europe



Source: *European energy exchanges and the Agency*

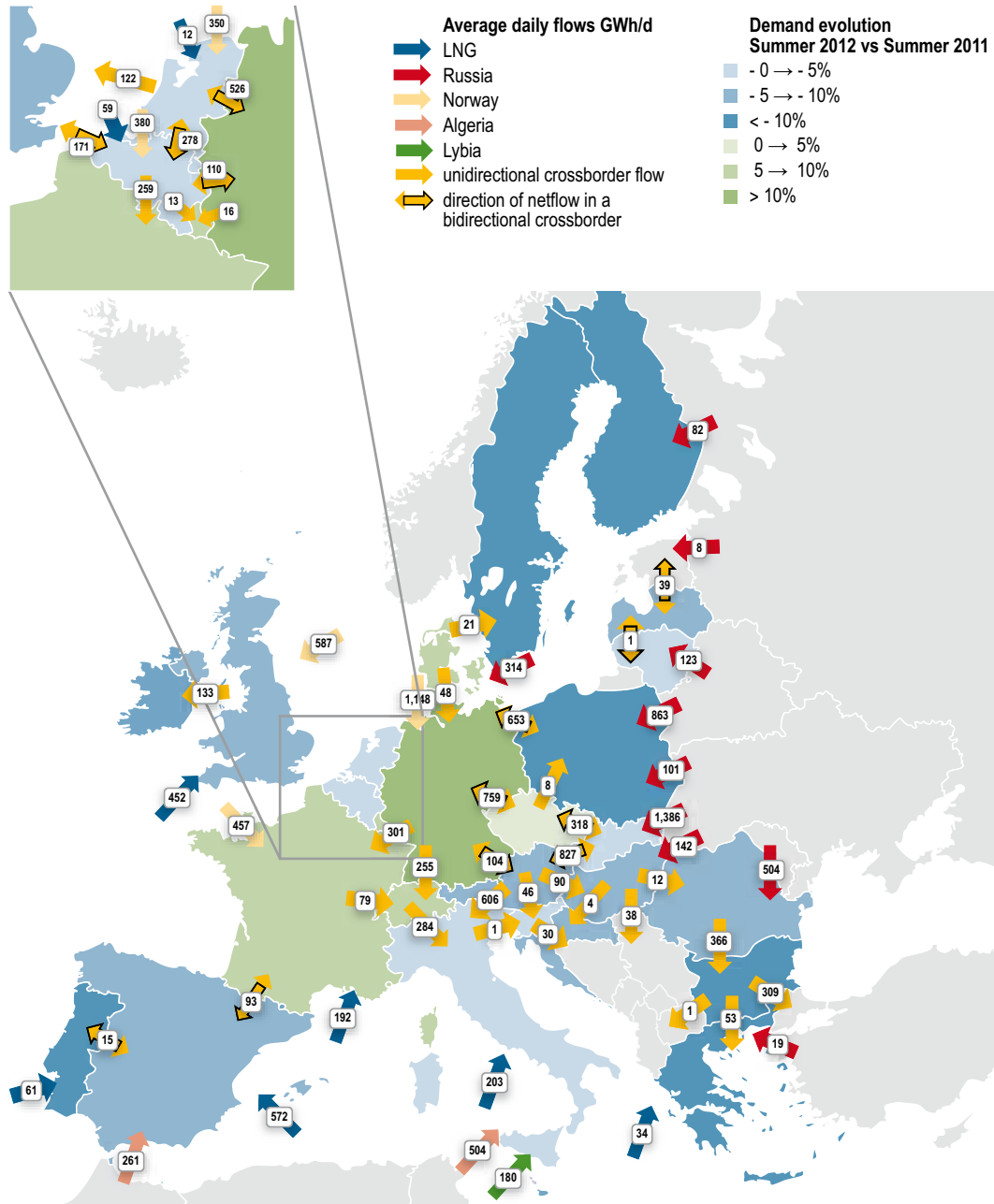
- |  |   |
|--|---|
| <b>1</b> Gaspoint Nordic                     | <b>6</b> GME, Gestore dei mercati energetici S.p.a. |
| <b>2</b> BaltPool UAB                        | <b>7</b> Powernext SA                               |
| <b>3</b> EEX, European Energy Exchange       | <b>8</b> APX  |
| <b>4</b> OTE, Operátor trhu s elektrinou a.s | <b>9</b> ICE Futures Europe                         |
| <b>5</b> CEGH, Central European Gas Hub      |   |

<sup>18</sup> Prospex Research.

Cross-border trade

142 The figure below shows the cross border flows of natural gas during summer 2012. The flows during winter are naturally higher, but directions of the flows are in general the same all year round<sup>19</sup>. Norway and the Netherlands are the main net exporters of natural gas in Europe while Italy and Germany are the major net importers<sup>20</sup>.

Figure 37: Cross border flows of natural gas



Source: ENTSOG

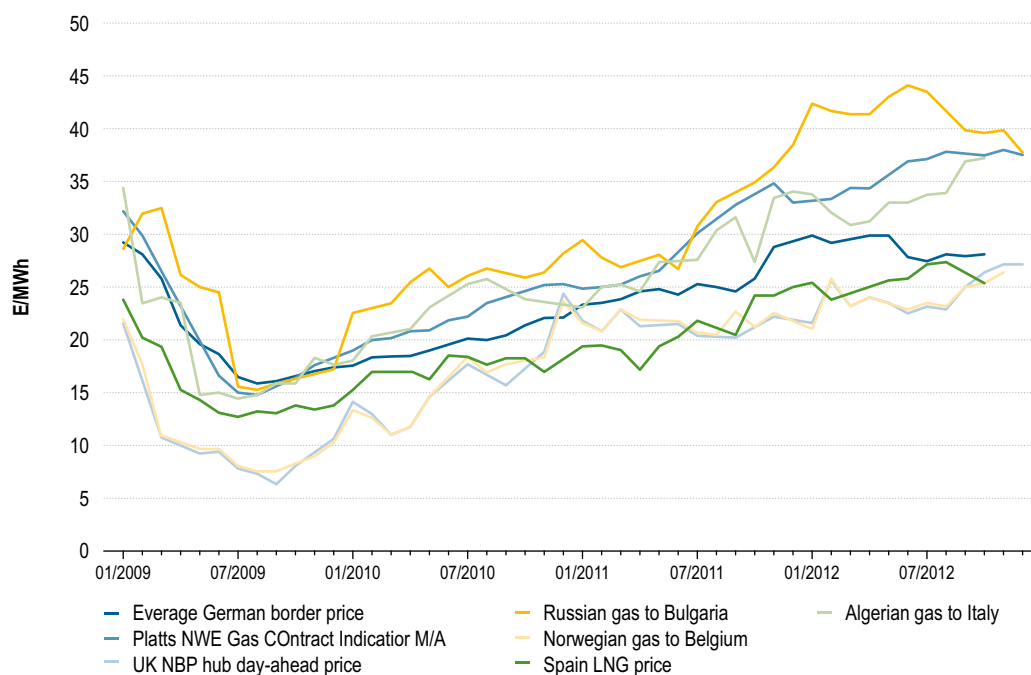
19 ENTSOG Outlook, see [http://www.entsog.eu/public/uploads/files/publications/Outlooks%20&%20Reviews/2013/SO005\\_130430\\_SO+SR.pdf](http://www.entsog.eu/public/uploads/files/publications/Outlooks%20&%20Reviews/2013/SO005_130430_SO+SR.pdf)

20 IEA Key World Energy Statistics 2012, see <http://www.iea.org/publications/freepublications/publication/kwes.pdf>

## Prices

143 Despite falling consumption, a trend in rising natural gas prices could be seen in 2012. The figure below illustrates the developments of wholesale gas prices from 2009 to 2012.

■ Figure 38: Comparison of EU wholesale gas prices



Source: DG Energy, Quarterly Report on European Gas markets, Volume 5, 2012

144 The average German price (28.9 Euro/MWh) was at a much lower level than Algerian to Italy (37.8 Euro/MWh), Russia to Bulgaria (40.5 Euro/MWh) and the Platts indicator for NWE Gas contracts which estimates a price in line with a theoretical purely oil indexed price for gas (38.1 Euro/MWh).

145 One year forward prices were lower than day-ahead prices, but the difference was rather small<sup>21</sup>.

146 Reverse flows were fully utilised to direct gas to places where it is most valuable. Whilst gas typically flows from East to West, gas was at times sent from Germany to Poland, Austria and the Czech Republic. Prices were higher on the continent, therefore larger physical flows of gas were supplied from the UK to North West Europe.

21 DG Energy, Quarterly Report on European Gas markets, Volume 5.

### Box 6: The increasing interdependency between gas spot markets and long-term contracts

Although around half of natural gas supply in the EU is still indexed to oil, recent developments may indicate that oil indexation is on the way out. Norwegian gas exporter Statoil announced in 2012 that it is actively moving away from oil-indexation in its gas contracts, and has agreed to renegotiate many gas contracts with European utilities in 2012 on that basis. The company has announced that it now sells just under half of its gas at oil-indexed prices, compared with around 70% in 2009, and that it projects that proportion to fall to under a quarter by 2015. At the same time, Norwegian exports of natural gas to the EU have increased almost to reach Russian export levels to the EU. New Statoil contracts are also being negotiated purely on a spot indexation basis, such as the November 2012 ten-year deal with the German firm Wintershall – the natural gas unit of the chemicals company BASF – which is spot-indexed mainly to the NCG and GASPOOL hubs. The contract is for a total of 45bcm, equal to more than 6% of Germany's annual gas consumption. These developments are pointing to a fundamental change in the way traditional natural gas exporters to Europe are pricing their product and will increase the interdependency between gas spot markets and long-term contracts. However, this was not mirrored in the divergence between the long-term oil-indexed and spot prices for gas which has even stabilised in 2012. A large gap between the two persists which continues to give grounds for concern to European utilities having to buy gas under long-term, oil-indexed contracts, but asked by their own customers to sell at lower spot levels.

#### Traded products

- <sup>147</sup> In general, three major types of traded products for natural gas can be distinguished in the Union: (i) long-term contracts, (ii) spot and physical forward contracts and (iii) derivative contracts.
- <sup>148</sup> Long-term contracts are used to import the majority of gas from Russia, Algeria and Norway. These contracts are usually drawn up for long periods of time (e.g. 20 or 30 years). This type of contract allows the buyer to secure his supplies and allows the producer to have definite customers in place over a long period, assisting in investment in exploration, production and transportation activities, costs which are paid off over the long term. Long-term contracts include clauses such as "Take or Pay", which impose a volume risk on the buyer, who has committed to pay for a minimum quantity as specified by the contract, whether the gas is used or not. For his part, the producer undertakes to supply gas volumes according to the cut-off periods and other terms and conditions stipulated within the contract, which imposes a price risk.
- <sup>149</sup> Spot and physical forward contracts are contracts for physical delivery over an agreed period for a "flat" or "baseload" quantity. When a spot, prompt or forward contract is agreed, the parties to the trade make a mutual commitment to deliver and receive gas at the price specified in the deal. Transfer of the gas is usually by daily nominations for title transfer to the relevant trading hub. Depending on the trading venue, financial settlement may be made daily during the period of gas delivery or monthly based on net transfers during the previous calendar month.
- <sup>150</sup> Derivatives are financial products whose value is dependent on an underlying asset. There are several different kinds of derivatives contracts. The most common ones are futures, options and swaps.
- <sup>151</sup> The box below illustrates the key characteristics of some of the more common wholesale gas products admitted to trading at major organised gas exchanges within the EU. It is however important to note that market rules, product definitions and product descriptions varies between the various exchanges.



### Box 7: Overview of standardised wholesale gas products admitted to trading at organised market places

<i>Type of product</i>	<i>Product description</i>
Within-day spot contracts	Contracts traded for delivery during the current gas day.
Day-ahead spot contracts	Contracts traded for physical delivery during the next day.
Prompt contracts	Contracts traded for delivery periods from one day to one month forward.
Calendar months contracts	Contracts traded for the forward period of a whole month starting at 06:00 on the first calendar day of the month and ending at 06:00 on the first calendar day of the following month.
Quarters contracts	Contracts traded for the forward period of three consecutive calendar month periods beginning on 1 January (Q1), 1 April (Q2), 1 July (Q3) and 1 October (Q4).
Seasons contracts	Contracts traded for the forward period of six consecutive calendar month periods – “winter” beginning on 1 October or “summer” beginning on 1 April.
Gas years contracts	Contracts traded for the forward period of 12 consecutive calendar month periods beginning on 1 October.
Calendar years contracts	Contracts traded for the forward period of 12 consecutive calendar month periods beginning on 1 January.
Futures contracts	Contracts for forward delivery of gas, traded at an organised market, with initial margin payments and daily settlement of market gains and losses.
Options	Contracts that offer the buyer of the option the right, but not the obligation, to buy or sell an asset at a pre-decided price at a specific time.

- 152 Purely financial OTC transactions are normally offered at a fixed price for an agreed quantity of gas to be notionally delivered over some future period, priced against a published day-ahead gas price, and settled at the end of the notional delivery period with a cash payment equal to the difference between the average of the daily gas price during the period and the fixed price originally agreed on.
- 153 Trading in OTC markets is usually based on standard master agreements defining all the aspects that are common to every deal: procedures for gas delivery, remedies in case of under-delivery, over-delivery or default by either party, processes to be followed for deal confirmation, billing, payment, and so on. With this agreement in place, the traders can focus on negotiating the price and trades can be concluded rapidly. Standard master agreements include NBP 1997, "short-term flat NBP trading terms and conditions", ZBT 2004, "Zeebrugge hub natural gas trading terms and conditions", European Federation of Energy Traders (EFET) Gas Master Agreement and ISDA Master Agreement.

■ Table 5: Overview of traded products at European gas exchanges

Gas Exchange	Geographic market	Spot	Futures	Intraday	OTC clearing	Options
ICE Futures Europe	UK, Netherlands, Germany		x		x	x
APX-Endex	UK, Zeebrugge, Netherlands	x	x	x	x	
EEX	Germany, Netherlands	x	x	x		x
Powernext	France	x	x	x	x	
CEGH Exchange	Austria	x	x			
Gaspoint Nordic	Denmark	x	x			
GME	Italy	x		x		
OTE	Czech Republic	x		x		

Source: Prospex Research and European energy exchanges

### 3.5.3 Assessment of the transparency of different categories of market places

#### 3.5.3.1 Introduction

- 154 Transparency is a prerequisite for a well-functioning, competitive and efficient market. It engenders trust, lowers barriers to entry and attracts new entrants – all of which helps generate liquidity.
- 155 The key rationale for transparency is to provide market participants with access to information about current trading opportunities and to facilitate price formation. It is also intended to address the potential adverse effect of fragmentation of markets and liquidity by providing information that enables users to compare trading opportunities and results across trading venues. Transparency is crucial for market participants to be able to identify an accurate market price and to make rational trading decisions about when and where to trade. The absence of reliable price information would greatly increase the cost for market participants to operate in the market. They would be much less certain about the value of a wholesale energy product at any given point in time and much less inclined, given the high analytical cost, to undertake transactions in those products. As a consequence, the number of transactions would be significantly lower, resulting in reduced liquidity and increased indirect transaction costs. If, in addition, there were little or no information available about where to find counterparties with the opposite trading interest, the lack of transparency would result in significant search costs. It would be much more difficult for market participants to search across different venues and obtain the best result for themselves or their client.

- <sup>156</sup> Pre- and post-trade transparency serves to address these issues. The transparency regime in MiFID only applies to shares admitted to trading on regulated markets (including when those shares are traded on a MTF or over the counter). It was designed to harmonise the available information, mitigate the potential effects of fragmentation of market liquidity, integrate EU equity markets in the eyes of issuers and investors, increase the potential number of active market participants in a security, and thus increase liquidity. Pre-trade transparency refers to the obligation to publish (in real-time) current orders and quotes (i.e. prices and amounts for selling and buying interest) relating to shares. Pre-trade transparency obligations apply to regulated markets, MTFs and systematic internalisers. Post-trade transparency refers to the obligation to publish a trade report every time a transaction in a share has been concluded. This obligation applies to regulated markets, MTFs and investment firms and to trades whether executed on or outside a trading venue. This information differs from pre-trade transparency data because it gives historical information about share transactions executed (rather than information on trading opportunities). Post-trade transparency is important for efficient price formation and to show which venues or firms are providing the best prices. It is also useful to enable clients of firms to monitor whether they are receiving best execution (i.e. whether the order has been executed at a reasonable price and on an appropriate venue) and is used for the pricing of portfolios.
- <sup>157</sup> However these pre- and post-trade transparency obligations do not apply to commodity derivatives. Hence there are only relatively high level transparency obligations with regard to exchanges listing commodity derivatives as part of their basic organisational requirements to ensure fair and orderly trading. Overall, the definition of financial instruments in MiFID does not cover the spot market in commodities and physically settled OTC transactions which are non-standardised. MiFID's basic objective of ensuring "financial stability and investor protection" is sometimes argued to be less relevant for energy products since energy derivatives are primarily used as hedging instruments for mitigating price risks of professional market participants (e.g. some utilities) and not as investment products. A potential breakdown of such markets, in this view, would not pose a systemic risk to financial stability or to the interests of investors. Specialist commodity derivative market participants can currently avail themselves of two exemptions from MiFID (and a further exemption from the Capital Requirements Directive) in specific cases. These exemptions will be addressed as part of the review of MiFID.
- <sup>158</sup> The European Commission identified shortcomings concerning the lack of transparency and price formation as a key area of concern calling for urgent action and priority in its Inquiry pursuant to Article 17 of Regulation (EC) No 1/2003 into the European gas and electricity sectors (Final Report) from 10 January 2007<sup>22</sup>.
- <sup>159</sup> The Third Energy Liberalisation Package established a new institutional framework for the gas and electricity sectors, ensuring non-discriminatory access to networks, and establishing new European bodies to plan and oversee the development of transmission systems. During the preparatory phase for this legislation the Commission recognised potential gaps and inconsistencies in the regulatory oversight framework governing wholesale markets. There have been claims that price increases on energy markets have not reflected fundamentals. However, without a clear oversight regime it is difficult to assess whether such claims are well founded. This undermines public trust in the integrity of the market, and risks allowing market abuse to go undetected, imposing real costs on consumers. Ensuring market integrity in this sector supports economic competitiveness and facilitates meeting the climate challenge.

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<sup>22</sup> COM(2006) 851 final.

- 160 The Third Energy Liberalisation Package implemented a broad range of disclosure obligations for fundamental data codified in the Package. The scope of these requirements can be expanded through the comitology procedure. However, the Third Energy Liberalisation Package only addresses traded markets to a limited extent. Supply undertakings are required to keep records on all trading transactions for five years. These can be accessed by competent authorities. However, the definition of supply undertakings is quite limited and MiFID-regulated entities are specifically not covered by this provision. There is also a wholesale market monitoring duty for national energy regulators (“monitoring the level of transparency, including of wholesale prices, and ensuring compliance of electricity undertakings with transparency obligations”, (Art 37, 1 (i) of Directive 2009/72/EC for electricity, with equivalent provisions in Directive 2009/73/EC for gas).
- 161 As regards pre- and post-trade requirements, European Energy Regulators already concluded in their final advice on the regulatory oversight of energy exchanges from 11 October 2011<sup>23</sup> that exchanges should publish traded volumes and prices of all products. Furthermore, additional price relevant data such as electricity generation should also be published. This includes e.g. installed capacity, information on planned and unplanned outages, filling rate of water reservoirs and ex-post data on actual generation. Further, ex-ante information on scheduled unavailability of significant consumption units and ex-post information on unplanned unavailability of significant consumption units should be published. This is already foreseen within the ERGEG advice on Guidelines on Fundamental Electricity Data Transparency.
- 162 Exchanges provide important information about price signals in the market. Thus it is beneficial if price sensitive information is also published there.
- 163 Regarding the publication of additional transparency information (not required by MiFID but essential to achieve transparency in energy markets), regulatory requirements should be set to ensure that the energy exchanges establish satisfactory routines. Publications through exchanges or exchange platforms may have the advantage that market surveillance departments could immediately verify the correctness of the data provided from market participants.
- 164 In its first edition of non-binding ACER Guidance, issued pursuant to Article 16(1) of REMIT, the Agency considered that inside information relating to wholesale energy products should be disclosed in a manner that it is capable of disseminating it as widely as possible. This is why the Agency believed that the disclosure of inside information through platforms has its merits and this disclosure mechanism is thus given priority. However, the Agency, at least for an interim period, also considered the disclosure of inside information which market participants possess through their own website if adequate transparency platforms do not yet exist.
- 165 Although in some Member States platforms for the disclosure of inside information were or are currently being established, either through modifications of transparency platforms according to Regulation (EC) No 714/2009 and (EC) No 715/2009, or through newly-created platforms, the Agency perceives the current situation as still lacking adequate platforms for the disclosure of inside information across the EU, in particular in wholesale gas markets, and therefore a lack of transparency in the disclosure of inside information.
- 166 This is why the Agency launched a discussion paper on the disclosure of inside information according to Article 4(1) of Regulation (EU) No 1227/2011 through platforms on 19 July 2012 and invited stakeholders for comments. The comments received were taken into account in the Agency’s second edition of ACER Guidance.

23 See [http://www.energy-regulators.eu/portal/page/portal/EER\\_HOME/EER\\_PUBLICATIONS/CEER\\_PAPERS/Cross-Sectoral/2011/C10-WMS-13-03a\\_EX%20Oversight%20Conclusions-11102011.pdf](http://www.energy-regulators.eu/portal/page/portal/EER_HOME/EER_PUBLICATIONS/CEER_PAPERS/Cross-Sectoral/2011/C10-WMS-13-03a_EX%20Oversight%20Conclusions-11102011.pdf)

<sup>167</sup> In its second edition of ACER Guidance on the application of REMIT, published on 28 September 2012, the Agency further elaborated its views concerning effective disclosure of inside information in accordance with Article 4(1) of REMIT. The Agency has maintained its view that the disclosure of inside information through platforms is the most effective. If platforms for the disclosure of inside information exist, for instance operated by TSOs or energy exchanges, market participants with inside information to disclose should use such disclosure mechanisms, if not otherwise specified in relevant rules and regulations, or by the competent NRA. If adequate transparency platforms do not yet exist or simultaneously to a publication through a platform for the disclosure of inside information, market participants may be allowed, at least for an interim period and unless otherwise specified, to publish inside information which they possess on their own website. However, where such a disclosure mechanism is chosen, it is important that disclosure of inside information enhances the level of transparency across the EU and does not distort the dissemination of information. Information shall therefore be disclosed in a manner ensuring that it is capable of being disseminated to as wide a public as possible, including the media. Social media shall only be used as additional sources not replacing website publications. Inside information shall be disclosed by a market participant free of charge, in a non-discriminatory, user-friendly and quantifiable manner. The information should be published in the official language(s) of the relevant Member State and in English or in English only.

### 3.5.3.2 Wholesale electricity markets

<sup>168</sup> The Third Energy Liberalisation Package introduced transparency rules through Regulation (EC) No 714/2009 and applicable guidelines and network codes. Regulation (EC) No 714/2009, and in particular Article 15 thereof and point 5 of the Guidelines on the management and allocation of available transfer capacity of interconnections between national systems, set out in Annex I to that Regulation lay down requirements for Transmission System Operators (TSOs) to publish data on the availability of networks, capacities of cross-border interconnectors and generation, load and network outages.

<sup>169</sup> The rules set forth in the Regulation apply to individual TSOs, with the exception of Article 15 which impose an obligation on TSOs to “put in place coordination and information exchange mechanisms to ensure the security of the networks in the context of congestion management”. TSOs have normally published fundamental data on their websites or used transparency platforms available at national or regional level.

<sup>170</sup> The Commission found that although those rules provided for an enhanced framework for improved data disclosure, their level of detailing and ensuing divergences in national applications had left traders with differing sets of market data across the EU. Furthermore, the lack of harmonisation in type and format of the published information made it impossible for market participants to develop a coherent and accurate view of electricity market fundamentals<sup>24</sup>.

<sup>24</sup> DG ENER Public Consultation Document – Guidelines on Fundamental Electricity Data Transparency

- 171 In order to remedy the situation, in January 2010 the Commission requested ERGEG to give advice in this matter and prepare a draft guideline by the end of 2010. The draft<sup>25</sup> served as an important input to Commission Regulation (EU) No 543/2013 on submission and publication of data in electricity markets and amending Annex 1 to regulation (EC) No. 714/2009, which was adopted in June 2013. The main novelty introduced by the Regulation is the establishment of a central information transparency platform to be operated by ENTSO-E. The platform will collect TSO's data on fundamental information related to generation, load, transmission and electricity balancing. It will be compulsory for TSOs to submit data to ENTSO-E in the format and within the deadline laid down in a Manual of Procedures to be adopted by ENTSO-E. Four months after entry into force of the Regulation, ENTSO-E will send a proposal for the operation of the platform and draft manual of procedures to the Agency who will then provide an opinion within two months. The new platform should be operational 18 months after entry into force of the Regulation.
- 172 The central information transparency platform will replace the existing ENTSO-E transparency platform (previously Etsovista platform) which has been operational since 2006 and has collected data from TSOs on a voluntary basis.
- 173 Article 4(4) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency recognises that publication of inside information in accordance with Regulation (EC) No 714/2009 or guidelines adopted pursuant to it constitute simultaneous, complete and effective public disclosure, but not necessarily timely public disclosure.
- 174 However, only limited platform solutions for the disclosure of inside information were made available or prepared in 2012 for the disclosure of inside information for electricity in Member States, in particular:
- Nord Pool Spot (NPS) uses the Urgent Market Message System (UMM System) as a specialist tool for members allowing them to fulfil the requirements of disclosing inside information. The UMM System has been used for several years to assure that members are able to disclose inside information in accordance with the NPS Market Conduct Rules. All UMMs are publicly shown on the Nord Pool Spot website. NPS recently reviewed the UMM system, partly as a result of REMIT. On 22 May 2013, the new UMM System was launched. NPS has streamlined the requirements and operability of the new system in order to incorporate the obligations in their own Market Conduct Rules as well as the REMIT obligations. The information required for an event disclosed through a UMM is where and when the event occurred, what unit it concerns, the reason and the consequence of the event, the start and end of the event and information about uncertainties. The UMMs are categorised as i) Outage or limitation, ii) Expansion or dismantling and iii) Market information<sup>26</sup>.
  - EEX has since 2009 published transparency data on its web based platform "Transparency in Energy Markets". The platform was established jointly by four German TSOs. In 2010, also the Austrian TSO, Austrian Power Grid AG, joined the platform and by 2011 they began submitting data to the platform. The generation and consumption data intended for publication is divided into two categories: i) Statutory Publication Requirements of the Transmission System Operator and ii) Voluntary Commitment of the Market Participants. The web page graphically presents, among other things, real time data on actual and planned production and planned and unscheduled non-usability of generation. Information on reporting issues relevant to the platform is submitted by Technical Status Reports. These are divided into "Incidents" which are unplanned events that cause flawed or delayed reporting data and "Maintenance Windows" which are scheduled activities that temporarily cause incomplete reporting data<sup>27</sup>.

25 ERGEG Advice on Comitology Guidelines on Fundamental Electricity Data Transparency (Ref: E10-ENM-27-03) of 7 December 2010

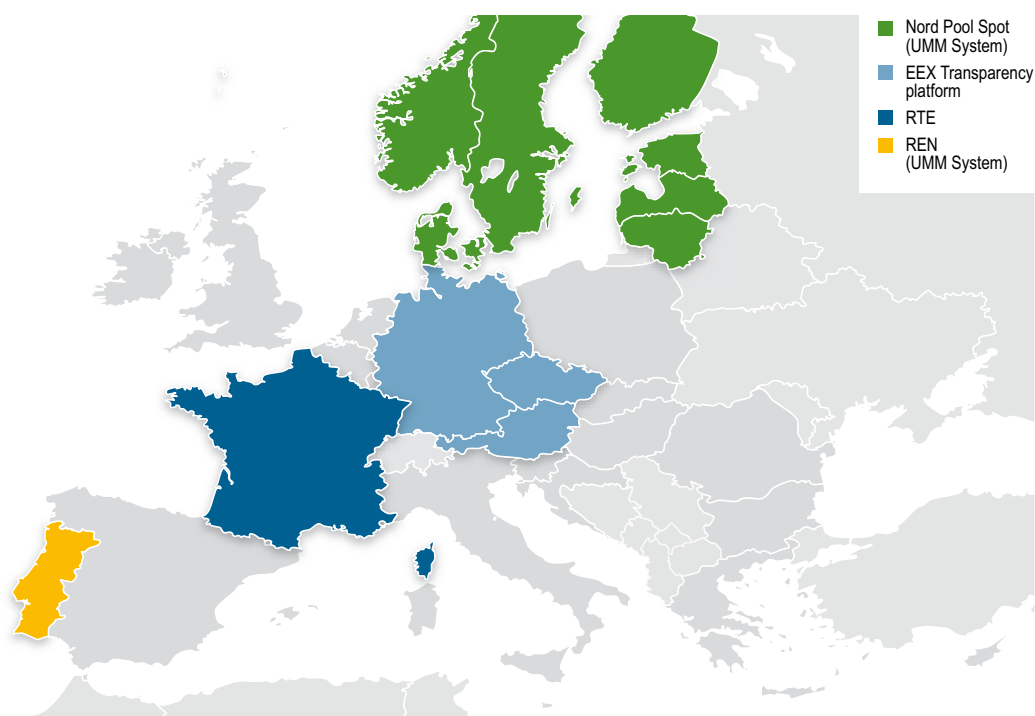
26 [www.nordpoolspot.com](http://www.nordpoolspot.com)

27 <http://www.transparency.eex.com/en/>

- On 26 January 2012, UFE and RTE announced that they will publish additional information on French electricity generation on transparency in the French electricity market<sup>28</sup> as part of their continuing efforts to promote greater transparency in the French electricity market, RTE and the generators of UFE have now created a new page on the RTE Customer Portal, for publishing additional information designed to give market players an even clearer picture of the country's supply of electricity. In mid-December 2011, RTE and UFE had already taken an important step forward in the provision of French electricity generation data, by giving market players actual generation figures for units over 100 MW within the hour, along with day-ahead forecasts for generation by the UFE fleet. That initiative is now being enhanced with the addition of a new page on the Customer Portal of the RTE website. The new page contains additional information to that already issued, notably on forecast availability and unplanned outages affecting the generating fleet. This new information, placed online in the form of continuous declarations by the generators, may cover such items as partial unplanned unavailability, or changes to the resumption of service dates for currently unavailable generating units, and more.

<sup>175</sup> The following figure illustrates platforms for disclosure of inside information for electricity that were in operation in 2012.

■ Figure 39: Platforms for disclosure of inside information in electricity markets in 2012



Source: The Agency

<sup>176</sup> In Member States where platforms do not exist, market participants normally publish their inside information on their company website or in an aggregated way through TSO transparency platforms. In some markets, news service providers such as Platts, Reuters, Montel etc., have established services which further disseminates the inside information which market participants have disclosed on their websites. These services contribute to an effective disclosure of inside information and enhance transparency in the markets.

<sup>177</sup> The improvement of transparency and the effective disclosure of inside information will remain a key priority for the Agency in 2013 and beyond.

<sup>28</sup> See <http://www.rte-france.com/en/news-cases/news/transparency-in-the-french-electricity-market-ufe-and-rte-publish-additional-information-on-french-electricity-generation-1>

### 3.5.3.3 Wholesale gas markets

- <sup>178</sup> The Third Energy Liberalisation Package introduced transparency rules through Regulation (EC) No 715/2009 and applicable guidelines and network codes. In particular, Articles 18 and 21 thereof and Chapter 3 of Annex 1 to the Regulation imposed transparency obligations on TSOs as regards the services they offer and the relevant conditions applied, technical information necessary for network access, tariffs, capacity, supply and demand information and balancing. In addition, Articles 15(1)(c) and 19 established similar obligations for SSOs and LSOs.
- <sup>179</sup> In 2010, a public consultation was carried out by ERGEG on transparency requirements existing at that time on the different parts of the gas value chain<sup>29</sup> which showed, among other things, dissatisfaction with the manner TSOs published fundamental data.
- <sup>180</sup> On 10 November 2010, the Commission adopted a decision amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks. The decision introduces enhanced transparency requirements for TSOs in order to ensure effective access to natural gas transmission systems and to provide a minimum guarantee of equal market access conditions in practice. In particular, the decision lays down harmonised rules concerning the format for the publication of fundamental data, such as the requirements to publish the information on a website accessible to the public, free of charge, in a user-friendly manner; in a clear, quantifiable, easily accessible way and on a non-discriminatory basis. The information must be published in the official language(s) of the Member State and in English, in a downloadable format that allows for quantitative analyses and in consistent units. As regards the timing of the publication, TSOs shall ensure the publication on a daily basis and updated every day of the aggregated amounts of capacities offered, and contracted on the secondary market where the information is available to the TSO.
- <sup>181</sup> Over time, TSOs have developed transparency platforms at national or regional level for the publication of fundamental data. Furthermore, ECG Erdgas Consult for Gas Infrastructure Europe (GIE), namely its transmission column (GTE), established in 2008 a transparency platform which has been managed by ENTSOG since its creation in 2009. The platform is based on information that is already published by individual TSOs. Information that may currently not be subject to obligatory publishing is made available by TSOs on voluntary basis. The transparency platform has been designed to facilitate access to transmission networks by, among other things, making all the information available in an organised and structured way on a single website. The publication of fundamental data on a Union-wide central platform has been made compulsory by Commission Decision of 24 August 2012 on amending Annex I to Regulation (EC) 715/2009. Therefore, since 1 October 2013, ENTSOG members are obliged to publish transparency data as well as data about capacity requests on ENTSOG's Transparency Platform, in addition to the publication on their individual website<sup>30</sup>. Expectations *inter alia* encompass the improvements to be brought by this new platform, in terms of user-friendliness, clarity and quality of information published and immediate access to it by network users and market participants<sup>31</sup>.

<sup>29</sup> The findings of the consultation are summarised in the document: ERGEG Consultation on additional transparency requirements for gas – Summary of responses (Ref. C11-GWG-81-04) of 8 November 2011.

<sup>30</sup> See [http://www.entsog.eu/public/uploads/files/publications/AWP%20&%20Annual%20Report/2013/ENTSOG\\_130430\\_AnnualReport2012\\_Webversion\\_FINAL\\_lowres.pdf](http://www.entsog.eu/public/uploads/files/publications/AWP%20&%20Annual%20Report/2013/ENTSOG_130430_AnnualReport2012_Webversion_FINAL_lowres.pdf)

<sup>31</sup> See [http://www.acer.europa.eu/Official\\_documents/Acts\\_of\\_the\\_Agency/Publication/ACER\\_Report\\_Gas\\_Transparency\\_Monitoring%209%20April%202013.pdf](http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Publication/ACER_Report_Gas_Transparency_Monitoring%209%20April%202013.pdf)



- 182 At the current stage, legally-binding transparency requirements are most detailed for transmission systems, but also some basic transparency requirements for LNG and storage facilities and on entry points according to points 3.2 et seq. of the aforementioned revised Chapter 3 of Annex 1 of Regulation (EC) No 715/2009 and in ERGEG Guidelines for Good Practice (GGP) apply, which are also considered relevant for the definition of inside information.
- 183 Article 4(4) of REMIT recognises that publication of inside information in accordance with Regulation (EC) No 715/2009 or guidelines adopted pursuant to it constitute simultaneous, complete and effective public disclosure, but not necessarily timely public disclosure.
- 184 However, only limited platform solutions for disclosure of inside information were made available or prepared in 2012 for the disclosure of inside information for gas in Member States, in particular:
- Energinet.dk has made available a website for gas market messages in order to ensure increased transparency on the gas market in line with the obligations in REMIT. All messages are publicly shown both on Energinet.dk's own website and, from April 2012, on the new website [gasmessages.dk](http://gasmessages.dk). The messages are comparable to the UMMs at Nord Pool Spot, but in this case, reporting concerns information relevant to the capacity and use of facilities for production, storage, consumption or transmission of natural gas. Aside from these so called REMIT messages, market participants can also disclose and receive information of mere commercial relevance on this website, such as information on mergers and acquisitions<sup>32</sup>.
  - National Grid has recently launched a central platform for GB REMIT Insider Trading Notifications on behalf of the GB Gas Industry. The web page publishes all notifications as well as a list of market participants that provide the site with information. The site also provides visitors with links to market participants own external websites that provide inside information notifications. Market participants can choose to add notifications to the platform either manually via a secure Provider Account set up by National Grid, or through Twitter<sup>33</sup>.
  - CEGH has developed a new web-based platform for the publication of inside information for market participants in Central and Eastern Europe. CEGH states that the platform is under continuous adaptation to functionalities and market needs. The platform is, for the time being, only used for reporting inside information according to Article 4 of REMIT and not fundamental data<sup>34</sup>.

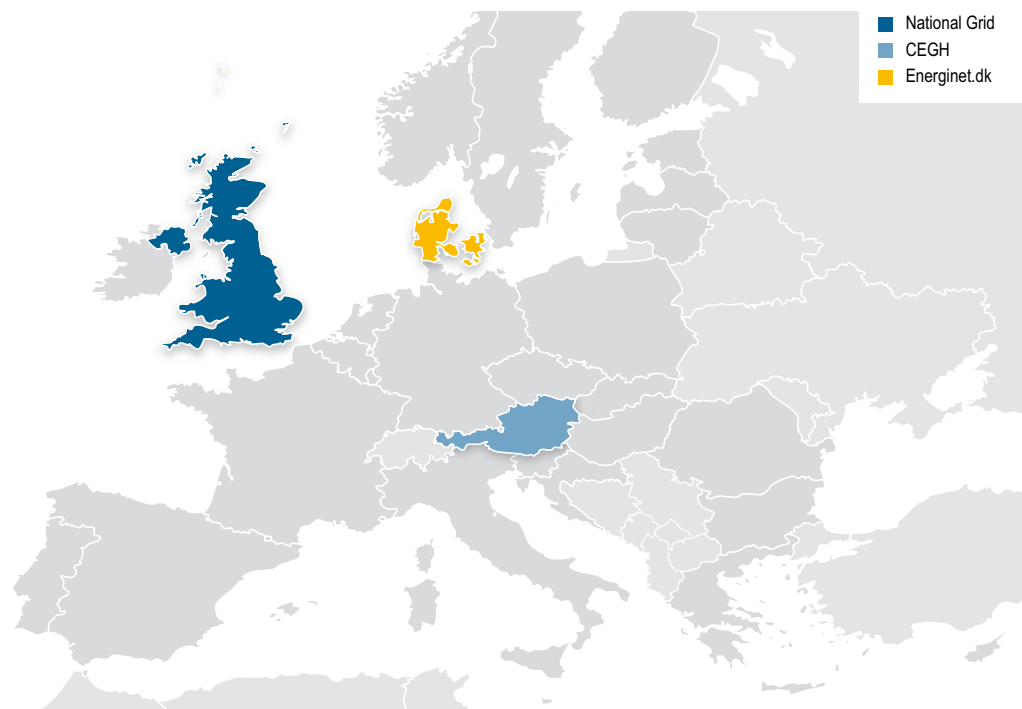
32 <https://gasmessages.dk/Pages/default.aspx>

33 <http://www.nationalgrid.com/uk/Gas/OperationalInfo/remit/>

34 <https://www.gashub.at/remit/content/details.xhtml?id=37722-1-2013>

185 The following figure illustrates platforms for disclosure of inside information for natural gas that were in operation in 2012.

■ Figure 40: Platforms for disclosure of inside information in natural gas markets in 2012



Source: The Agency

186 In Member States where platforms do not exist, market participants normally publish their inside information on their company website or in an aggregated way through TSO transparency platforms. In some markets, news service providers such as Platts, Reuters, Montel etc., have established services which further disseminates the inside information which market participants have disclosed on their websites. These services contribute to an effective disclosure of inside information and enhance transparency in the markets.

187 The improvement of transparency and the effective disclosure of inside information will remain a key priority for the Agency in 2013 and beyond.

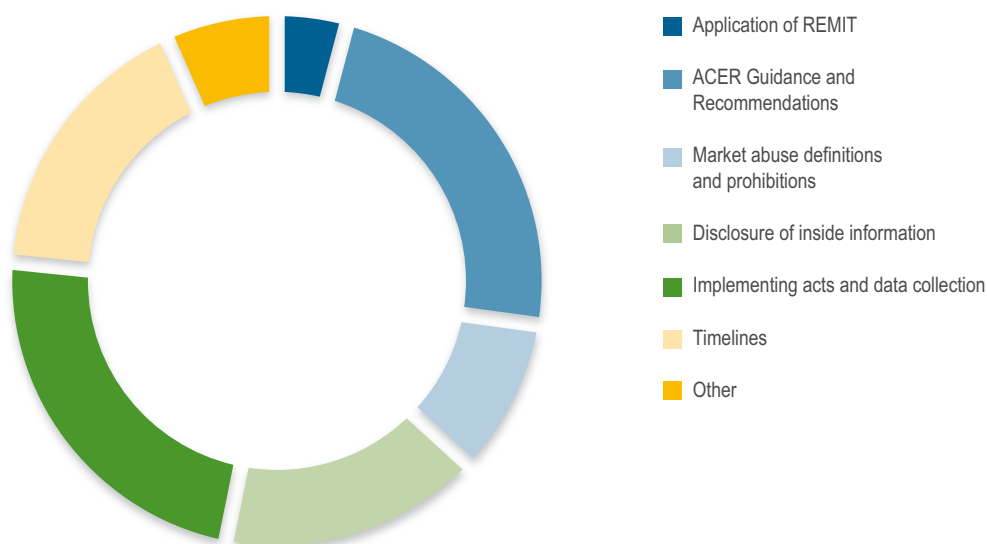
### 3.6 Stakeholder involvement

<sup>188</sup> The Agency published a Q&A paper on REMIT and answered numerous questions on REMIT addressed by market participants through the Agency's REMIT mailbox aiming at informing market participants and the wider public on REMIT and its implications. The Q&A paper is divided into four sections; background information on REMIT, the role of the Agency, REMIT definitions, obligations and prohibitions for market participants, and the timeline for implementation. The Agency also provided a form on its website through which market participants and other stakeholders can submit requests for clarification on issues related to the implementation of REMIT. The relevant clarifications are provided in the Q&A document.

<sup>189</sup> The Q&A paper, like the Guidance, will be updated from time to time to reflect changing market conditions and the experience gained by NRAs and the Agency in the implementation of REMIT, including through the feedback of market participants and other stakeholders. The Agency also organised four public workshops between the adoption of REMIT and the end of 2012 with around 100 participants on average. The Agency furthermore communicated with the public on all REMIT matters and organised several workshops and ACER representatives participated as speakers in regional workshops organised by NRAs for instance in London, Copenhagen, Lisbon, Madrid and Vienna to raise awareness among market participants of REMIT and its obligations and prohibitions applying to market participants in 2012. The stakeholder involvement and the intensive dialogue with market experts was also ensured through the establishment of three expert groups for the REMIT implementation, namely the REMIT implementation expert group with regulatory experts from market participants, the market surveillance expert group with market surveillance experts from organised market places and the IT expert group with IT experts from potential data providers under REMIT.

<sup>190</sup> The following figure indicates the topics of the REMIT questions received from stakeholders:

■ Figure 41 : Topics of REMIT questions raised by stakeholders during 2012:



<sup>191</sup> REMIT related questions shall be sent to the Agency's following functional mailbox: [REMIT@acer.europa.eu](mailto:REMIT@acer.europa.eu). The input received will be used for the Agency's Q&A paper as well as for the updates of the ACER Guidance on the application of REMIT.

## 4 Conclusions and recommendations

### 4.1 Conclusions

- 192 With REMIT, a completely new regulatory framework for transnational market monitoring has been established, more comprehensive and powerful than any existing national regulatory framework. Having this in mind, it requires substantial effort from both the Agency, national authorities and stakeholders to get everything in place by the time of full implementation.
- 193 The Agency has achieved major REMIT implementation milestones in 2012 and will continue its REMIT implementation activities in 2013 and beyond. It will further enhance its market monitoring and co-ordination activities in 2013. The setting-up of the Market Monitoring Department and the recruitment of staff will advance both REMIT implementation and market monitoring and coordinating activities.
- 194 The Agency's assessment of the operation and transparency of different categories of market places and ways of trading suggest that wholesale energy markets are increasingly interlinked across the Union. Over the last years, electricity and gas wholesale prices have significantly converged. Market integration is expected to provide several benefits, one of which is enhanced economic efficiency due to interconnectors, allowing the lowest cost producers to serve demand in neighbouring areas.
- 195 However, despite the progress made towards creating the Internal Energy Market, wholesale energy markets within the Union are still mainly regional in scope. This will merit a regional market monitoring approach by the Agency under REMIT.
- 196 The Target Model for electricity includes besides the day-ahead market coupling, the intra-day balancing and cross border forward markets. Day-ahead price coupling solutions are implemented in the Iberian Peninsula, the CWE region, between CWE and Great Britain, in the Nordic region and Estonia as well as Poland, between the Czech Republic, Slovakia and Hungary, Italy and Slovenia, and between Northern Ireland and the Republic of Ireland.
- 197 As regards balancing markets, there are still major differences in national market arrangements, both in electricity and gas. The most important remaining differences include lack for harmonisation of market design and system operation, lack of harmonisation of reserve products and reserve levels, and regulatory regime differences, like for instance differences in regulatory incentives to TSOs and market participants, cost allocation principles and variations in the treatment of intermittent resources.
- 198 Volumes traded on organised electricity and gas markets have increased across the Union over the last years. In Ireland, the Nordic countries and on the Iberian peninsula, over 70 % of the total electricity consumption was traded over organised market places in 2012. However, a large proportion of trading, especially in gas markets, still takes place outside of organised markets. 79% of trading in European gas markets was traded OTC in 2012.
- 199 Overall, the number of market participants in the European wholesale energy markets is expected to increase. The higher degree of market integration between national and regional markets is likely to lead to an increase in market activity and larger number of trading participants compared to that of isolated markets.

- 200 Market integrity and the level of transparency fundamentally depend on the availability of inside information to market participants. Currently, only a few national and or regional platforms for the disclosure of inside information exist. As of May 2013, four NRAs stated that there is a platform solution available for both electricity and gas in their Member States, while an additional four NRAs reported that there is a platform for either electricity or gas. In its Guidance to NRAs on the application of REMIT, the Agency considers publication through platforms as the most effective way of publishing inside information under REMIT.
- 201 Although the prohibition of market abuse and the obligation to disclose inside information apply to market participants with the entry into force of REMIT, national implementation of investigatory and sanctioning powers were only foreseen by 29 June 2013. The absence of a national implementation of REMIT, already indicated in cases dealt with in 2012, show that the enforcement of REMIT will have its limitations in the interim phase until REMIT is fully implemented at national level. It is therefore of utmost relevance to ensure that the investigatory and sanctioning regimes are put in place in all Member States without exceptions.

## 4.2 Recommendations

<sup>202</sup> According to Article 7(3), first subparagraph, of REMIT, the Agency may make recommendations to the Commission as regards market rules, standards and procedures which could improve market integrity and the functioning of the internal market. The Agency may also evaluate whether any minimum requirements for organised markets could contribute to enhanced market transparency.

<sup>203</sup> On the basis of the experiences gained so far, the Agency considers the following recommendations to provide a sound basis to enhance market transparency and to improve market integrity and the functioning of the internal energy market.

### 4.2.1 Recommendations as regards market rules, standards and procedures

<sup>204</sup> The Agency's assessment of the operation and transparency of different categories of market places and ways of trading confirms the Agency's recommendations provided to the Commission on the records of transactions and REMIT implementing acts which it considers are necessary effectively and efficiently to monitor wholesale energy markets under REMIT. The major recommendations on standards and procedures for the reporting of information are the following:

- The Agency recommends that the data collection of records of transactions in balancing market contracts is postponed until the relevant network codes apply. Separate implementing acts for records of transactions in balancing market contracts should take into account these network codes. Balancing market contracts should therefore currently not be included in the list of contracts to be reported.
- For reasons of operational reliability according to Article 12 of REMIT, the Agency considers it necessary and appropriate that reporting of records of standardised transactions or of transactions in standardised energy commodity contracts, including derivatives, is performed through Registered Reporting Mechanisms (RRMs). Direct reporting by market participants should be foreseen only for records of transactions in non-standardised contracts, unless they also become RRM. This is in line with the ARMs approach proposed by the Commission in the context of the MiFID review and currently already applied by major financial market authorities at national level. In view of the increasing number of market participants, the proposed RRM approach is the most appropriate way to enable the Agency to collect data efficiently and effectively whilst ensuring operational reliability.
- In view of the increasing importance of organised market places, in particular in wholesale electricity markets, the Agency has proposed a list of reportable instruments, but recommends that the implementing acts foresee that the Agency collects and publishes a set of information regarding the types of standardised wholesale energy contracts to increase transparency in wholesale energy markets and to facilitate data collection under REMIT. Whilst for energy derivatives, existing product taxonomies and product IDs used for the reporting under EU financial market rules may apply, the implementing acts should stipulate that the Agency develops a product taxonomy for the aforementioned types of energy commodity contracts as a basis to develop a unique product identification for the purpose of transaction reporting.
- With regard to the remaining importance of non-standardised OTC contracts, in particular in wholesale gas markets, the Agency considers reporting of records of transactions in non-standardised contracts, including a copy of the contract itself, as crucial to have a full picture of the trading activities of market participants and for an effective and efficient market monitoring of wholesale energy markets. The level of standardisation in the natural gas market appears still rather low and a limitation of reporting obligations to records of transactions in standardised contracts would therefore seriously undermine monitoring of the wholesale gas markets. However, the Agency considers reporting from one party sufficient for records of transactions in non-standardised contracts. For an effective and efficient detection of potential breaches of market abuse prohibitions, non-standardised contracts themselves should be reported, in order to ensure that the Agency

and national regulators have all relevant information at hand when monitoring wholesale energy market activities.

- The proposed approach of data collection on non-standardised contracts aims at avoiding reporting discrimination between standardised contracts traded at organised markets and non-standardised contracts traded OTC and information asymmetries for regulators between organised and OTC markets. Similar information asymmetries in the derivatives market led to the introduction of OTC reporting obligations under EMIR for mitigating those risks and improving the transparency of derivative contracts.
- The Agency strongly believes that the lessons learned in derivatives markets should also be considered in energy commodity markets to avoid recurrence.
- Regarding the current level of transparency in wholesale energy markets, the Agency considers it crucial that reporting of information according to Article 8(5) of REMIT covers both reporting of inside information according to Article 4(1) of REMIT and reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes. As described above, any non-reporting of inside information would undermine the monitoring of the prohibition of insider trading and ignore experiences in EU financial markets. Inside information should be reported to the Agency through the service providers disclosing inside information on behalf of market participants or collecting the data through web feeds from company websites, registered with the Agency as Regulated Information Services (RIS).

#### 4.2.2 Recommendations as regards minimum requirements for organised market places

<sup>205</sup> The Agency was faced with several different national supervisory schemes of organised market places during its REMIT implementation activities, e.g. in the preparation of MoUs with organised market places or in the preparation of the Agency's recommendations to the Commission on the records of transactions. Article 15 of REMIT defines obligations of persons professionally arranging transactions concerning the establishment and maintenance of effective arrangements and procedures to identify breaches of Articles 3 or 5 of REMIT, but the regulation does not define supervisory powers for the Agency or NRAs to monitor compliance with these obligations. The Agency believes that the CEER/ERGEG advice on the regulatory oversight of energy exchanges from 11 October 2011 (Ref: C10-WMS-13-03a) is still valid and merits further consideration. The Commission should therefore consider the following for the supervision, governance and role of market surveillance departments of energy spot exchanges, in particular to enable the Agency and NRAs to monitor the compliance of persons professionally arranging transactions with the provisions in Article 15 of REMIT according to common standards, possibly even extending it to all persons professionally arranging transactions:

- Supervision and Governance: Minimum standards for a supervisory framework for energy spot exchanges should be set and harmonised at European level and each energy spot exchange should be subject to appropriate and effective exchange supervision by a competent exchange supervisory authority to increase market integrity.
- Market Surveillance: Each energy exchange should have a clear framework for conducting market surveillance, compliance and enforcement activities and there should be oversight of these activities by an exchange supervisory authority.



### 4.3 Outlook and way forward

<sup>206</sup> The implementation of REMIT is still ongoing and will continue in 2013 and beyond. The ACER work programme foresees the following deliverables for 2013 for REMIT implementation:

- Contributions in the context of the adoption of the REMIT Implementing Act.
- Update of the ACER guidance on the application of REMIT and further cooperation with NRAs.
- Development of IT solutions for the registration of market participants.
- Development of IT solutions for the market surveillance, data collection, data screening and analysis.
- Definition of the wholesale energy market monitoring strategy for the effective implementation of REMIT (detection of instances of market abuse), including cooperation with ESMA.
- Definition of mechanisms for sharing the information among the Agency, NRAs, ESMA and other authorities and of transparent rules for the dissemination of information.
- Annual report on ACER activities under REMIT.

<sup>207</sup> A successful REMIT implementation will depend heavily on the appropriate financial and human resources being made available to the Agency in order to adequately fulfil the additional tasks assigned to it under this Regulation.

## Annex I

### ACER

The Agency for the Cooperation of Energy Regulators (the Agency) is the European Union body created by the Third Energy Package to achieve the IEM.

The Agency was officially launched in March 2011 and has its seat in Ljubljana, Slovenia. As an independent European body which fosters cooperation among European energy regulators, the Agency ensures that market integration and harmonisation of regulatory frameworks are achieved in accordance with the EU's energy policy objectives.

The overall mission of the Agency, as stated in its founding regulation, is to complement and coordinate the work of national energy regulators at EU level and to work towards the completion of a single EU energy market for electricity and natural gas.

The Agency's missions and tasks are defined by the Directives and Regulations of the Third Energy Package, especially Regulation (EC) No 713/2009 establishing the Agency. In 2011, the Agency received additional tasks under Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency (REMIT).

According to REMIT, the Agency is responsible for monitoring wholesale energy markets to detect market abuse. Wholesale energy markets monitoring by the Agency shall be based on timely data collection of transactions executed and orders placed on wholesale energy markets in the European Union (trading data), as well on as fundamental data, that is data related to the operational conditions of the energy systems in both the electricity and gas sectors.

More information on the Agency can be found on the website: [www.acer.europa.eu](http://www.acer.europa.eu).

Further information on the Agency's activities under REMIT can be found on the website: <http://www.acer.europa.eu/remit/Pages/default.aspx>.

## Annex II

### List of abbreviations

ACER/Agency	Agency for the Cooperation of Energy Regulators
AMIT WG	ACER Market Integrity and Transparency Working Group
ARIS	Agency's REMIT Information System
CEREMP	Centralised European Registry of wholesale Energy Market Participants
EMIR	European Market Infrastructure Regulation
ENTSO-E	European Network of Transmission System Operators for Electricity
ENTSO-G	European Network of Transmission System Operators for Gas
ESMA	European Securities and Markets Authority
FMA	National Financial Market Authority
IT TF	IT Task Force
MAD	Market Abuse Directive
MAR	Market Abuse Regulation
MiFID	Markets in Financial Instruments Directive
MiFIR	Markets in Financial Instruments Regulation
MMG TF	Market Monitoring Governance Task Force
MoU	Memorandum of Understanding
NRA	National Regulatory Authorities
OTC	Over the Counter
PESEM	Project for data Exchange Specification for Energy Markets
PIA	Preliminary Initial Assessment
REMIT	Regulation on wholesale Energy Market Integrity and Transparency
RIA	Reviewed Initial Assessment
RIS	Registered Regulated Information Services
RRM	Registered Reporting Mechanisms
SNE	Seconded National Expert
STR	Suspicious Transaction Report
TCO	Total Cost of system Ownership
TSO	Transmission System Operator
UMMs	Urgent Market Messages
VTP	Virtual trading point
WMS TF	Wholesale Markets Surveillance Task Force

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## List of related documents

- ACER Work Programme 2012  
[http://www.acer.europa.eu/portal/page/portal/ACER\\_HOME/The\\_Agency/Work\\_programme/ACERWP%202012FINAL.pdf](http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf)
- 1st edition of ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency  
[http://www.acer.europa.eu/remit/Documents/1st\\_edition\\_ACER\\_guidance.pdf](http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf)
- 2nd edition of ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency  
<http://www.acer.europa.eu/remit/Documents/2nd%20edition%20of%20ACER%20Guidance%20on%20the%20application%20of%20REMIT.pdf>
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011  
<http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions.pdf>
- Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 concerning balancing market and transportation contracts  
<http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions%20balancing%20and%20transportation.pdf>
- Regulation (EC) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>
- REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators  
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