

POSITION PAPER ON REMIT

Introduction

IFIEC welcomes the opportunity given by ACER to give reasonable feedback on REMIT in order to reach an efficient outcome of the process. We support free and transparent markets and also welcome the principle behind many disclosure elements of REMIT, but on the conditions that i) some sense of proportion is applied around end-users, most of whom are explicitly forbidden to speculate, and ii) commercial confidentiality is retained where outages for end-users could have a disproportionate impact on their market situation. IFIEC has significant concerns about the confidentiality of information. In the worst case, industrial companies could end up publishing commercially sensitive information into their own raw material and product markets.

Reporting of Inside Information

Publishing of detailed information

REMIT foresees the obligation to report inside information. In electricity there is a threshold of 100 MW, while in gas the threshold is to be defined on national level. In the 2nd Edition of the ACER guidance on the application of REMIT market participants are given examples how and in what detail to publish the information. For large industrial energy consumers one point is very critical. The guidance suggests publishing the name and the location of the relevant asset.

If industrial consumers are forced to publish information with that kind of detail, the following situation might occur:

A company is using gas as a feedstock to produce an intermediate product. In the event of an outage the intermediate has to be bought on the market externally. The production facility for that intermediate product has a reporting obligation. The company would now have to publish in detail, that this specific production facility at its specific location has an outage. External suppliers of the intermediate product would immediately know that there is an urgent need for the company to buy that product on the free market. As a result of this disclosure, the company would have to pay more for the intermediate product because the external supplier has gained normally confidential information of the production process.

Publishing information in that kind of detail might also be interpreted as “signaling” by the competition authorities. The solution could be that the company should only be required to publish the affected balancing zone instead of its name and location of the asset. In general the transparency regulation does not foresee that the name of the individual plant is made public. Normally the data are aggregated per bidding zone. It would be strange for REMIT to deviate from this. Individual plant data can be made available towards ACER – if really needed - but not made public.

Threshold for electricity

ACER guidance suggests a possible reporting threshold of 100 MW for electricity, because it may have a significant impact on the market i.e. may be inside information. Only in narrow set of circumstances would a 100 MW swing have the capacity to 'move the market'. Certain electro intensive industries operate batch processes which swing this much on a regular basis without doing so, and IFIEC is concerned that Regulators might mistakenly interpret such normal production fluctuations as “planned outages”. Therefore a 100 MW threshold is not helpful to electro intensive industries in globally and European competing sectors. Reporting market-significant unplanned outages is more appropriate (because it is less likely to happen), and even then Article 4.2 exemptions (delayed reporting for protecting commercially confidential issues) should apply. It is essential, that production related information on processes remains confidential.

Threshold for gas

The 2nd ACER guidance asks NRAs to set the threshold for gas at national level after proper market consultation. At the moment this threshold does not exist in most of the member states, although the obligation to publish is active. ACER should address this uncertainty in the 3rd guidance document. For example the thresholds could be linked to a percentage of the traded volumes in a market zone.

Reporting of Transactions

Scope of Transaction reporting

In some MS large users buy electricity from integrated suppliers at the market price, but the Supplier uses its own generation arm to source the power, not the market. We need a consistent position from ACER as to how this is to be reported and by whom (the supplier or by both parties?).

Some large users also place regular “buy” orders against a published 3rd party Spot-market index using their anticipated weekly consumption. These would seem an improbable way to manipulate the markets, and IFIEC questions their inclusion.

For the reasons above, also that the supply contract is defined as the ‘Wholesale Market Product’, large users using such ‘full service contracts’ would expect to meet their reporting obligations via presentation of those supply contracts to their NRA, rather than individual price fixes between the consumer and the supplier within the term of the agreement.

600 GWh – No clear guidance

REMIT states that “Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products, as long as the consumption at individual plants under the control of a single economic entity that have a consumption capacity of less than 600 GWh per year and do not exert a joint influence on wholesale energy market. Consumption capacity means the consumption of a final customer of either electricity or natural gas at full use of that customer's production capacity. It comprises all consumption by that customer as a single economic entity, in so far as consumption takes place on markets with interrelated wholesale prices.”

This definition causes a lot of uncertainty among large industrial users. Firstly it is not clear which markets are defined as “interrelated” by their wholesale prices – surely a Single Energy Market would be “interrelated”? ACER should therefore clarify which markets are seen as connected markets for electricity and if different, for gas.

Secondly it is not clear, how “economic entity” is defined and if the companies are obliged to report every tiny supply contract. For example a company might have several big plants in the Netherlands, whose consumption is above 600 GWh. In addition the company has office buildings, depots or shops all over Europe. These could have several hundred small supply contracts for electricity and gas. Is it really necessary to report all those? IFIEC suggests that the Implementing Acts should exclude contracts under a certain volume. For example all contracts based on the delivery of standard load profiles could be treated as “de minimis” and the rule should be clearly set as “600 GWh in a given balancing zone”. This would ensure that costs for the industry and benefit for the transparency are balanced, without undermining the goals of REMIT.

Generally “Consumption Capacity” is not an appropriate parameter to assess whether a consumer is in or out of scope. Leaving aside the obvious point that many of the EU's manufacturers would love to be running at full capacity, most plants never do. IFIEC suggests taking an average of the last x year's consumption instead, perhaps adjusted if public announcements to the relevant stock market have been made about expansion or contraction of a site.

Interaction of REMIT and EMIR

Currently REMIT and EMIR have some overlapping data collection fields. 16 fields have the same content, but are named slightly differently in EMIR. Although this seems not to be a big problem, the IT costs of double reporting could be huge, both to the respective Regulatory authorities and the users providing parallel data.

It is therefore essential to have full consistency with the Financial Regulations;

- the same fields,
- with the same names,
- with the same definitions,
- in the same units of measure,

- submitted on the same report to one information depository
- within the same timeframe
- for the same reporting period.

Implementation across Member States

From the feedback IFIEC Europe receives from its members, enforcement powers and implementation guidance is not consistent across the member states and timescales may differ from NRA to NRA. It would be very helpful if the rules and enforcement powers could be harmonized, and IFIEC trusts that this will be monitored by ACER.

Conclusion

IFIEC is in line with the goals of REMIT and fully supports its basic principles. However, REMIT can only be successful and efficient if reporting is limited to those transactions, which are really needed to evaluate whether prices are being manipulated. Currently we fear that the suggestions on the table might lead to an unnecessary bureaucracy, the volume of whose data may obscure important malpractice. Initially at least, REMIT should prioritize the areas of real risk and apply a much higher volume cutoffs, or wider end-user exemptions.