

## **Eurogas priorities for REMIT II implementation – Recommendations for ACER guidance**

Eurogas welcomes the revision of REMIT as a necessary step to reflect the evolving energy market and further increase transparency. Over the last decade, REMIT has provided a robust legal framework, where prices reflect fair and competitive interaction between supply and demand and market abuse is prevented. Even under the exceptional circumstances of the energy crisis, REMIT has operated effectively.

Eurogas' objective is to contribute to a successful and harmonized implementation of the revised REMIT framework, by sharing industry expertise with institutional stakeholders. Considering the broad scope of the revision and the upcoming entry into force of its main provisions, secondary and tertiary legislation will be key to facilitate compliance. In this regard, Eurogas welcomes the extension of ACER guidance and guidelines to additional REMIT provisions and stresses the importance of adopting a tailor-made approach in adequacy with the specifics of energy markets while ensuring the safeguard of the principle of proportionality. In addition, Eurogas underlines that stakeholders' consultation is key in shaping effective and proportionate regulatory measures. It is therefore important to ensure the incorporation of stakeholders' feedback in ACER guidance.

### **Definition of 'inside information' [Art. 2(1)]**

Guidance on new provisions related to the definition of inside information should be prioritised, as this definition underlies the prohibition of insider trading which is fundamental to market transparency and integrity. Updated ACER guidance will facilitate the harmonization process among Member States and therefore, the compliance of market participants (MPs) active across the Union. A list of potential 'intermediate steps in a protracted process' relevant for the purpose of Art.2(1) could effectively reduce ambiguity and should only include events with a reasonable certainty of occurrence such as Final Investment Decisions in physical assets. The disclosure should not cover announcements of mere intentions, technical investigations, or ongoing negotiations, in line with the suggested changes to Art.17 of the Market Abuse Regulation's revision (revised Regulation (EU) No 596/2014).

### **Definition of 'market manipulation' [Art.2(2)]**

The new definition of market manipulation related to a benchmark in Art.2(2)c should be dissociated from LNG market data reporting, since genuine transactions and orders can be considered manipulative for the benchmark if they are not aligned with prevailing market conditions at a given time (even if related to a legitimate business rationale). Moreover, we believe that the LNG Benchmark published by ACER does not constitute a benchmark as defined in Art.2(20b) of the Regulation at this stage, as it is not used for trading purposes. ACER guidelines should clarify that the LNG benchmark should be part of the definition of benchmark in Art.2(2)c only when it becomes an effectively and frequently used benchmark for trading activities.

### Definition of ‘wholesale energy products’ [Art.2(4)]

The extension of the definition of wholesale energy products to contracts for the supply of LNG as well as contracts and derivatives relating to the storage of natural gas in the Union requires additional clarifications. For example, in the case of storage contracts, the characteristics of a storage point and a storage contract should be outlined. When it comes to LNG, the inclusion of final consumers such as consumers of LNG for road transport or the private use of LNG storages for transport fuel applications should not be deemed proportionate to the objectives of this Regulation, and guidelines should confirm the exclusion of such applications as already done in previous FAQs.

In our view, the existing thresholds for the inclusion or exclusion of assets from the wholesale energy products definition should be maintained; notably 10 MW for electricity production units and 20 MW for gas production units.

### Definition of ‘algorithmic trading’ and related obligations [Art.2(18), Art.5a]

The revised REMIT framework adapts to the evolving energy market by considering the uptake of algorithmic trading. A wide range of tools, determining different type of parameters and requiring different levels of human interaction are available to MPs. ACER guidance on the definition ‘algorithmic trading’ in Art.2(18) should help the MPs determine the type of algorithms included, while ensuring that their inclusion serves the objectives of the Regulation.

For instance, order types such as iceberg orders do not constitute an algorithm per se. Iceberg orders, which consist of a large order being subdivided among smaller units, contribute to increased liquidity and reduce market disruptions caused by sudden changes in supply and demand. Such orders do not determine the timing of the transaction, but rather the conditions under which the order is to be executed. In our view, such order types, even when executed via an authorized execution tool like Trayport or TT, are therefore excluded from the definition of algorithmic trading. In case an algorithm determines whether to use such order types, the order types are considered as part of the algorithm.

Regarding the notification of algorithmic trading activity described in Art.5a(2), notification through the Centralised European Register of Energy Market Participants (CEREMP) would constitute an effective way to notify the national regulatory authority of the Member State in which the MP is registered as well as ACER in a single step.

### Definition of ‘organised market place’ (OMP) [Art.2(20)]

The definition of organised market place has been extended beyond energy exchanges, energy brokers and energy capacity platform to encompass ‘any other system or facility in which multiple third-party buying or selling interests in wholesale energy products interact in a manner that may result in a transaction’. Under this definition, any screen or platform where interactions might lead to transaction would be covered, for example the AggregateEU platform. In addition, if multiple interests on one side of the binding order are sufficient (buying ‘or’ selling interests), this definition would also encompass Direct Market Access or single-dealer solutions. Given the broad scope of a literal interpretation of this definition, ACER guidance will be essential to ensure proportionality

and provide specific examples of platforms that should or should not be covered. In this regard, Eurogas would recommend confirming the existing guidance on OMPs.

### **Obligation to publish inside information and authorization and supervisions of IIPs [Art.4, Art.4a]**

Under Art.4, publication of inside information pursuant to the Transparency Regulation (Regulation (EC) No 715/2009) is not necessarily considered as timely publication. Therefore, we believe that it is important that entities in the scope of the Transparency Regulation also perform their publication within an hour, as it is prescribed to other MPs.

As for the authorisation and supervision of inside information platforms, sharing of information related to forecast and actual uses as described in Art.4a(4) point e) should remain information that is published at an aggregated level rather than at the individual market participant's level due to the nature and commercial sensitivity of such information.

### **Materiality thresholds [Art.6(1)b]**

The energy industry has long supported quantitative materiality thresholds for the disclosure of inside information under Art.4 of REMIT. Eurogas therefore welcomes the introduction of a Commission delegated act 'establishing, taking into account national specificities, minimum thresholds for the identification of events which, if they were made public, would be likely to significantly affect the prices of the wholesale energy products'. Currently, the evaluation of whether an event significantly affect prices is performed based on numerous criteria described in ACER guidance, which causes uncertainties and risks of non-compliance among MPs. The threshold should be harmonised at European level and set a minimum value under which information should not be disclosed. Above this threshold, MPs should still have the possibility to assess whether an event may have a significant impact on market price.

### **LNG Market Data Reporting/LNG Price Assessment and Benchmark [Art.7(a-d)]**

Provisions relating to LNG market data reporting and LNG price assessment and benchmark should be addressed as the application of the Solidarity Regulation (Council Regulation (EU) 2022/2576) comes to an end. LNG data reporting and the LNG benchmark should be better integrated into the REMIT reporting system to create an efficient system and avoid double or irrelevant reporting of LNG data. In practice, Solidarity Regulation IT infrastructures such as Terminal should be aligned with the one used for REMIT reporting (ARIS). Real time reporting should be limited to what is strictly necessary for ACER's price assessment/benchmark and avoid duplication with existing LNG reporting under REMIT. This would transform the LNG market data reporting into a more advanced and adequate system like the existing REMIT data reporting. Eurogas strongly recommends avoiding duplication and minimizing additional burdens on LNG market participants, as well as consulting stakeholders in the elaboration of ACER guidance and the relevant implementing acts foreseen in Art.7c(2) relative to the submission of data for the LNG price assessment.

### **Registration of Market-Participants [Art.9a]**

Third-country market participants play a vital role in providing physical energy and liquidity to EU energy markets. New requirements pertaining to the registration of third-country MPs and the

associated ACER guidance should remain proportionate and avoid creating additional barriers to trade within the European Union, which would negatively impact market liquidity and security of supply for gas and LNG in particular. ACER guidelines should also clarify that the representative acts as single point of contact in the European Union and what powers/liabilities the representative can incur.

It is important that ACER and NRAs proceed with the prompt update of CEREMP to allow third-country MPs to notify the details of their designated representative as requested by the Regulation.

### **Suspicious Transaction and Order Reporting [Art.15]**

The REMIT review also substantially expands the STOR requirements under Art.15, which already apply to financial transactions covered by the Market Abuse Regulation. Although no ACER guidance is foreseen on this point, it could be provided through interpretation of the related 'market manipulation' definition in Art.2(2). To ensure consistency with existing legislation, it is important to consider that persons that have fulfilled their STOR obligations under the requirements of Art.16 of MAR (Regulation (EU) No 596/2014), consequently, have fulfilled their obligations under Art.15 of REMIT. This interpretation is in line with the principle stated in Art.8(3), which mentions that persons and entities that have reported transactions in accordance with MiFIR (Regulation (EU) No 600/2014) and EMIR (Regulation (EU) No 648/2012) should not be subject to double reporting of such transactions.

### **Stakeholder consultation**

Secondary and tertiary level REMIT legislation, including ACER guidance, have proven valuable to MPs in the implementation of REMIT I. Considering the revision of REMIT, ACER documents should be updated in the course of 2024 in order to ensure harmonised implementation at national level. The process of delivering ACER documents should be further improved by ensuring transparent and regular exchanges with the industry to guarantee that operational practices and MPs' concerns are accounted for. This result could be achieved by setting up systematic public consultations, enabling sufficient time for response to such consultation and establishing feedback mechanisms on consultation responses. The publication of ACER documents and the associated public consultation should be thematic, tackling one macro topic at the time in all the relevant documents instead of intervening on a full single document at a time or proceeding with one single consultation for all topics. For instance, ACER guidance could cover the key theme of data reporting in TRUM, TRUM annexes, MOP, FAQs and other relevant documents simultaneously to the public consultation on the Commission's implementing regulation. The overarching topics of inside information, or RRM and IIPs, could be tackled in a similar way. Such a stepwise approach would grant consistency and enable effective stakeholder feedback.

In conclusion, secondary and tertiary level legislation are crucial to navigating REMIT requirements effectively. By addressing priorities such as inside information disclosure, algorithmic trading, STOR, and third-country market participant registration, regulators can enhance market integrity and transparency while minimizing compliance burdens. Meaningful stakeholder consultation could unlock the full potential of ACER guidance by ensuring that regulatory measures are proportionate, practical, and aligned with energy market specificities.