

Multilateral Memorandum of Understanding

**between the Agency for the Cooperation of Energy  
Regulators and National Regulatory Authorities and  
market monitoring bodies**

concerning

**cooperation and coordination of market monitoring  
under Regulation (EU) No. 1227/2011 of the European  
Parliament and of the Council on wholesale energy  
market integrity and transparency (REMIT)**

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THE SIGNATORIES OF THIS MULTILATERAL MEMORANDUM OF UNDERSTANDING,

Whereas

1. On 8 December 2011, the EU adopted new stringent rules on wholesale energy trading. Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT) introduces a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market manipulation and insider trading.
2. Recital 17 of REMIT provides that efficient market monitoring at Union level is vital for detecting and deterring market abuse on wholesale energy markets. Close cooperation and coordination between the Agency and NRAs is therefore necessary to ensure proper monitoring and transparency of energy markets.
3. According to Article 7(1) of REMIT, the Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation.
4. 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. Member States may provide for their national competition authority or a market monitoring body established within that authority to carry out market monitoring with the NRA.
5. According to Article 10(1) of REMIT, the Agency shall establish mechanisms to share information it receives in accordance with Article 7(1) and Article 8 with NRAs, competent financial authorities of the Member States, national competition authorities, ESMA and other relevant authorities. Before establishing such mechanisms, the Agency shall consult with those authorities.
6. According to Article 11 of REMIT, REMIT shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data or the obligations of the Agency, when fulfilling its responsibilities, relating to its processing of personal data under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
7. According to Article 12(1) of REMIT, the Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. The Agency shall take all necessary measures to prevent any misuse of, and unauthorized access to, the information maintained in its systems. NRAs, competent financial authorities of the

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Member States, national competition authorities, ESMA and other relevant authorities shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 of REMIT and shall take steps to prevent any misuse of such information. The Agency shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures.

8. According to Article 13(1) of REMIT, NRAs shall ensure that the prohibitions set out in Articles 3 (prohibition of insider trading) and 5 (prohibition of market manipulation) and the obligation set out in Article 4 (obligation to publish inside information) are applied.
9. 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. The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2 of REMIT, as appropriate. NRAs shall cooperate with the Agency and with each other, including at regional level, for the purpose of carrying out their duties in accordance with REMIT.
10. According to Article 16(2) of REMIT, NRAs shall without delay inform the Agency 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 either in that Member State or in another Member State. Where an NRA suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take action in accordance with paragraph 4 of Article 16 and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of Article 16.
11. According to Article 16(3)(a) of REMIT, NRAs shall inform the Agency and the competent financial authority of their Member State where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive.
12. According to Article 16(3)(d) of REMIT, NRAs shall inform the Agency, the national competition authority of their Member State and the Commission where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.
13. According to Article 16(4) of REMIT, the Agency shall, on the basis of initial assessments or analysis, where it suspects that there has been a breach of REMIT, have the power:
  - a. to request one or more NRAs to supply any information related to the suspected breach;
  - b. to request one or more NRAs to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the NRA concerned;

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- c. where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned NRAs to investigate whether any provision in 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 of one or more Member States in the investigatory group.
14. According to Article 16(5) of REMIT, an NRA receiving a request for information under point (a) of Article 16(4), or receiving a request to commence an investigation of a suspected breach under point (b) of Article 16(4), shall immediately take the necessary measures in order to comply with that request. If that NRA is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons. An NRA may refuse to act on a request where: (a) compliance might adversely affect the sovereignty or security of the Member State addressed; (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or (c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed. In any such case, the NRA shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.
15. According to Article 17(1) of REMIT, any confidential information received, exchanged or transmitted pursuant to REMIT shall be subject to the conditions of professional secrecy laid down in Article 17(2) to 17(4) of REMIT. According to Article 17(4) of REMIT, without prejudice to cases covered by criminal law, the Agency and NRAs which receive confidential information pursuant to REMIT may use it only in the performance of their duties and for the exercise of their functions.
16. The most expedient way to define the scope and practical terms of implementing the cooperation foreseen in REMIT between the Agency and NRAs is a Memorandum of Understanding (MoU),

HAVE REACHED THE FOLLOWING UNDERSTANDING:

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# Chapter 1

## General principles and scope

### Article 1

#### General principles and scope

1. Without prejudice to the provisions set forth by EU and national legislation, the purpose of this MoU is to define the scope and practical terms of the cooperation under Articles 7 and 16 of REMIT between the Agency and the undersigning NRAs and market monitoring bodies in accordance with Article 7(2) of REMIT (hereinafter referred to as “NRAs”), with the aim of promoting an effective, efficient and coordinated monitoring of wholesale energy markets as referred to in REMIT.
2. The purpose of this MoU is to set out the procedures that the Agency and the NRAs intend to follow. This MoU is not intended to create additional obligations or to replace or amend existing legislation. Nothing in this MoU is intended to restrict, extend or alter the powers, functions or duties of the Agency or the NRAs.
3. The cooperation between the Agency and the NRAs shall be based on the following principles:
  - a. *Distribution of powers.* The clauses of this MoU shall be interpreted and applied in such a way as to ensure that the distribution of powers between the Agency and NRAs set forth by law, and in particular by REMIT, is not altered;
  - b. *Mutual collaboration.* Both the Agency and the NRAs shall cooperate in order best to fulfill their respective functions, as established in REMIT and other applicable legislation, and in the spirit of mutual trust and understanding.

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## **Chapter 2**

### **Cooperation and coordination**

#### **Article 2**

##### **Cooperation on market monitoring (Art. 7 of REMIT)**

1. According to Article 7(1) 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 7(2), NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets.
2. Where regional cooperation among NRAs on wholesale energy market monitoring exists, the NRAs shall periodically inform the Agency of the main results of the regional monitoring. The Agency and concerned NRAs shall mutually agree on the particulars regarding the frequency and the organisation of such reporting.

#### **Article 3**

##### **Cooperation at Union, regional and national level (Art. 16(1) of REMIT)**

1. 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. The Agency shall publish non-binding Guidance on the application of the definitions set out in Article 2 of REMIT, as appropriate. NRAs shall cooperate with the Agency and with each other, including at regional level, for the purpose of carrying out their duties in accordance with REMIT.
2. NRAs shall keep the Agency informed about their application of the Agency's Guidance. Such information may be provided in the context of the Agency's working groups and task forces.
3. NRAs may agree with each other and with the Agency on specific conditions to implement the cooperation on wholesale energy market monitoring at regional level in order to reflect regional or national specificities. Such agreements shall be appended to this MoU as an annex.
4. Market monitoring experts from the Agency and from NRAs shall together with market monitoring experts from organised market places, including e.g. energy exchanges and broker platforms, meet at least twice yearly with the aim of exchanging experiences and discussing current issues and new developments of mutual interest with respect to wholesale energy market monitoring. Topics of particular interest for such meetings may include matters such as developments in trading conduct and market practices, experiences from concluded disciplinary matters, developments in market rules.

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The frequency and the organisation of such meetings shall be mutually agreed on. Where appropriate, officials from national financial authorities and other relevant authorities may be invited to participate in such meetings.

#### **Article 4**

### **Notifications by NRAs to the Agency of suspected breaches of REMIT (Art. 16(2) and 16(3) of REMIT)**

1. According to Article 16(2) of REMIT, NRAs shall without delay inform the Agency 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 either in that Member State or in another Member State. Where an NRA suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Member State are being carried out in another Member State, it may request the Agency to take action in accordance with Article 16(4) and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with Article 16(3).
2. Notifications by NRAs to the Agency where an NRA suspects that acts are being, or have been, carried out on wholesale energy markets which breach the prohibitions of market manipulation or insider trading, shall include the following information:
  - a. a description of the transaction(s) and/or order(s) concerned;
  - b. the reasons for suspecting that the transaction(s) and/or order(s) might constitute market abuse;
  - c. in which Member State the suspected breach is being, or has been, carried out;
  - d. identities of persons carrying out transaction(s) and/or order(s);
  - e. identities of any other persons known to be involved in the transaction(s) and/or order(s);
  - f. capacity in which the person performing the transaction(s) and/or order(s) acts;
  - g. identity of the person making the notification;
  - h. if applicable, a request to the Agency to take action in accordance with Article 16(4) or Article 16(3)(b) of REMIT;
  - i. further information which may be of significance.
3. Notifications referred to in paragraph 2 of this Article shall be submitted through the web form for Suspicious Transaction Reporting (STR) available on the Agency's website, or by email to the email address specified by the Agency for this purpose.
4. Notifications by NRAs to the Agency of any suspected breach of REMIT other than market manipulation or insider trading shall include information on all relevant circumstances regarding the suspected breach, and shall be made to the Agency by email to the email address specified by the Agency for this purpose. The Agency shall confirm to the NRA that it has received a notification.

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5. According to Article 16(3)(a) of REMIT, NRAs shall inform the Agency and the competent financial authority of their Member State where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC and which affect financial instruments subject to Article 9 of that Directive. According to Article 16(3)(d) of REMIT, NRAs shall inform the Agency, the national competition authority of their Member State and the Commission where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.
  6. Notifications by NRAs to the Agency in accordance with Article 16(3)(a) and Article 16(3)(d) of REMIT shall be made to the Agency by email to the email address specified by the Agency for this purpose, and shall, without prejudice to national agreements and legislation, include the same information as listed in the second paragraph of this Article. Notifications under Article 16(3)(d) are without prejudice to national agreements and legislation and to obligations under Regulation (EC) No 1/2003.
  7. The Agency shall confirm to the NRA that it has received a notification according to Article 16(2) or Article 16(3) of REMIT. The Agency may request information from the NRA regarding the proceedings in accordance with Article 5 of this MoU.

## **Article 5**

### **Requests by the Agency to NRAs to supply information related to a suspected breach of REMIT (Art. 16(4)(a) of REMIT)**

1. According to Article 16(4)(a) of REMIT, the Agency shall have the power to request one or more NRAs to supply any information related to a suspected breach of REMIT.
2. Requests by the Agency to NRAs in accordance with Article 16(4)(a) shall include the following information:
  - a. a description of the specific information requested by the Agency;
  - b. the circumstances behind the information request;
  - c. an indication of whether the information contained in the request is confidential;
  - d. an indication of the urgency of the request, or the desired time period for reply;
  - e. further information which may be of significance.
3. The Agency will request information according to Article 16(4) of REMIT inter alia on the basis of initial assessments or analysis.
4. The relevant NRA(s) shall confirm to the Agency that it has received a request to supply information and shall indicate a preliminary date by when the requested information will be supplied.



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5. According to Article 16(5) of REMIT, an NRA receiving a request for information shall immediately take the necessary measures in order to comply with that request. If that NRA is not able to supply the required information immediately, it shall without further delay notify the Agency of the reasons. An NRA may refuse to act on a request where: (a) compliance might adversely affect the sovereignty or security of the Member State addressed; (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or (c) a final judgment has already been delivered in relation to such persons for the same actions in the Member State addressed. In any such case, the NRA shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.
  6. Notifications by NRAs to the Agency in accordance with Article 16(5) of REMIT shall be made by email to the email address specified by the Agency for this purpose.

## **Article 6**

### **Requests by the Agency to NRAs to commence investigations of a suspected breach of REMIT (Art. 16(4)(b) of REMIT)**

1. According to Article 16(4)(b) of REMIT, the Agency shall have the power to request one or more NRAs to commence an investigation of a suspected breach of REMIT, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the NRA concerned.
2. Requests by the Agency to NRAs in accordance with Article 16(4)(b) shall include the following information:
  - a. which prohibition(s) or obligation(s) in REMIT the Agency suspects may have been violated and the reasons for these suspicions;
  - b. identities of the persons involved in the suspected breach;
  - c. if applicable, transaction(s) and/or order(s) involved;
  - d. if applicable, identities of the persons carrying out the transaction(s) and/or order(s);
  - e. if applicable, capacity in which the person performing the transaction(s) and/or order(s) acts;
  - f. further information which may be of significance.
3. The NRAs shall confirm to the Agency that they have received a request to commence an investigation.
4. According to Article 16(5) of REMIT, an NRA receiving a request to commence an investigation of a suspected breach of REMIT shall immediately take the necessary measures in order to comply with that request. An NRA may refuse to act on a request where: (a) compliance might adversely affect the sovereignty or security of the Member State addressed; (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Member State addressed; or (c) a final judgment has already been delivered in

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relation to such persons for the same actions in the Member State addressed. In any such case, the NRA shall notify the Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

5. Notifications by NRAs to the Agency in accordance with Article 16(5) of REMIT shall be made by email to the email address specified by the Agency for this purpose.
6. NRAs commencing investigations of suspected breaches of REMIT pursuant to an Article 16(4)(b) request from the Agency shall keep the Agency informed about the proceedings and outcome of the investigation.

## **Article 7**

### **Establishment and coordination of investigatory groups by the Agency (Art. 16(4)(c) of REMIT)**

1. According to Article 16(4)(c) of REMIT, the Agency shall, where it considers that a possible breach of REMIT has, or has had, a cross-border impact, have the power to 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 of one or more Member States in the investigatory group. According to Article 16(5) of REMIT, NRAs shall participate in an investigatory group convened in accordance with Article 16(4)(c), rendering all necessary assistance.
2. Requests by the Agency to NRAs in accordance with Article 16(4)(c) of REMIT shall include the following information;
  - a. which prohibition(s) or obligation(s) in REMIT the Agency suspects may have been violated and the reasons for these suspicions;
  - b. identities of the persons involved in the suspected breach;
  - c. transaction(s) and/or order(s) involved;
  - d. identities of persons carrying out transaction(s) and/or order(s);
  - e. capacity in which the person performing the transaction(s) and/or order(s) acts;
  - f. a list of authorities that have been requested to participate in the investigatory group;
  - g. further information which may be of significance.
3. The NRAs shall confirm to the Agency that they have received a request to participate in an investigatory group.
4. Representatives of concerned NRAs participating in an investigatory group shall cooperate with the representatives of the Agency and with each other as well as with representatives of the competent financial authority or other relevant authority of one or more Member States if their participation in the investigatory group was requested by the Agency.

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## **Article 8**

### **General procedures for the cooperation**

1. The Agency and NRAs shall establish smooth and effective communication channels for the proper compliance with the objectives of this MoU at all times.
2. The Agency and NRAs shall each nominate a list of liaison officer(s) for the purposes of cooperation undertaken under this MoU and shall notify any changes to all other parties to this MoU. The Agency and NRAs shall provide the necessary contact details of its liaison officer(s).
3. The electronic notifications and requests envisaged in this MoU will be secured in order to ensure privacy of the confidential information exchanged. Details will be defined by the Agency and provided to the NRAs accordingly.
4. Depending on the subject of the interaction, the Agency and concerned liaison officer(s) will determine the most efficient way of interaction, which may be in written or oral form.

## **Article 9**

### **Public communication**

1. NRAs shall inform the Agency and vice versa prior to any public communication relating to breaches of REMIT.
2. If an NRA decides to make public a sanction within the course of its duties under REMIT it shall indicate if the outcome of the case has been achieved with the aid of the European cooperation provided for in REMIT and in this MoU.

## **Chapter 3**

### **Professional secrecy**

#### **Article 10**

##### **Professional secrecy (Art. 17 of REMIT)**

1. According to Article 17(1) of REMIT, any confidential information received, exchanged or transmitted pursuant to REMIT shall be subject to the conditions of professional secrecy laid down in Article 17(2) to (4) of REMIT.
2. Information shared between the Agency and NRAs, within the scope of this MoU, shall be used exclusively for the purposes permitted by REMIT.

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## **Chapter 4**

### **Final provisions**

#### **Article 11**

#### **Publication**

The Agency and NRAs agree to publish this MoU on their respective websites.

#### **Article 12**

#### **Amendments to the MoU**

The Agency and NRAs may by common consent make amendments and add further Annexes to this MoU as they consider necessary, in particular concerning the registration of market participants according to Article 9 of REMIT and data sharing according to Article 10 of REMIT.

#### **Article 13**

#### **Entry into effect and termination**

1. This MoU shall enter into effect on the date of its signing.
2. This MoU shall be concluded for an unlimited period of time and may be terminated by any of the parties at any time by giving, at least, 30 days prior written notice to each other.

Done at Brussels on 17 July 2013