

Vattenfall's views on the proposals for Regulation on Wholesale Market Integrity and Transparency (REMIT)

Policy Paper

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The Regulation on Wholesale Market Integrity and Transparency (REMIT) is a fundamental regulation on the energy market, providing confidence that prices set on wholesale energy markets reflect a fair and competitive interplay between supply and demand, and that no profits can be drawn from market abuse.

It is therefore important that any changes are clear and possible to implement in a good way, and that they contribute to a transparent and well-functioning market. There is also a need for sufficient implementation time. The following questions need to be answered:

- Why is a change proposed? Does it bring more transparency and integrity to the market? Does it solve a problem with the existing regulation? Before taking any measures it needs to be clear what the problem is and investigated how it can be solved in the most efficient way.
- Who is responsible? If this is not clear there is a risk that nobody feels responsible or that several bodies do the same thing leading to inefficiency and higher costs.

Against this background, we have the following proposals when it comes the proposal for a Regulation on Wholesale Market Integrity and Transparency:

1. Definitions need to be clear and unambiguous

In the current proposals there is an overlap between the definitions of market participant (MP), organized market place (OMP) and persons professionally arranging and executing transactions (PPAET).

OMPs have not been defined in REMIT before, but are defined in in the Commission Implementing Regulation (EU) No 1348/20144, Article 2 point (4). The proposed definition is not in line with the existing. The proposed definition includes PPAETs, which means that all PPAETs are OMPs and in principle that all market participants are OMPs as all market participants per definition are entering into transactions on the wholesale energy market which can potentially be seen as professionally executing transactions. It cannot be intended that all market participants are treated as “exchanges” and subject to the proposed obligations of OMPs. In specific, we propose:

- OMPs should be defined as operators of trading venues (e.g. exchanges) and brokers.
- Market participants should be continued to be defined as any person, who enters into transactions including the placing of orders to trade in wholesale energy markets. (e.g. a generator) as is the case in today's legislation.
- The earlier definition of persons professionally arranging transactions should be re-instated

Market manipulation is defined as entering into any transaction, issuing any order to trade or engaging in any other behaviour relating to wholesale energy products. In line with the Staff Working Document the intention of adding “any other behaviour” seems to be to cover potential capacity withholding. Such capacity withholding, however, only will lead to market impact if there is a dominant market position. The treatment of dominant market players already today is covered under competition law and in order to avoid double regulation we would propose to delete “any other behaviour” from the definition of market

manipulation. In addition to the above, the expansion of the scope leads to significant legal uncertainty while clarity is required for provisions that constitute a criminal offence, if violated.

2. A threshold for disclosure of inside information increases transparency

Today, what constitutes inside information is decided on a case by case basis. A threshold for publication obligations is desired as there is a need to harmonize across the EU and to make the information flow more secure (less prone to delays and insider trading) and predictable.

The benefits of using a threshold for what constitutes inside information, instead of a case by case decision, is for example that publication could always be done in an automated way or directly at the production/ consumption unit instead of by someone with market knowledge (typically the persons trading power). The publication would then be quicker which reduces the risk further that inside information could reach the trading floor. It would also be known to all what information to expect on the market, and it would be the same across the EU.

In the Transparency regulation (COMMISSION REGULATION (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets), there is a threshold of 100 MW for publication. This has also been established as a market practice for what constitutes inside information under REMIT and could be taken as inspiration. Either the European Commission or ACER shall be entitled to set up such disclosure thresholds by adjustment of Article 4 or 16b respectively.

3. Roles and responsibilities need to be clear

Market participants are responsible for the disclosure of this information and that this information remains inside information until this information is publicly disclosed. However, while it is market participants obligation to disclose the inside information through inside information platforms (IIPs), they do not have any leverage over IIPs. Consequently, the responsibility and legal liability for the publication as well as the transmission of data to ACER must lie with the IIPs themselves.

Equally, organized market placed (OMPs) should bear full responsibility and liability on the reporting of the transactions and orders, other than accuracy of (counterparty) data to be provided by the market participants. OMPs shall be solely responsible, and legally liable, for making available to the Agency data relating to the transactions and the order book, as well as for ensuring the correctness of the details reported. Market participants should hence be released from any obligations with this regard including the obligation to conduct checks on the data provided.

Clarification of Article 4 to that extent is required.

4. Stakeholder consultation is a must-have

Harmonisation and trust in the market will benefit if everyone knows what is expected of them. Therefore, we are positive to guidance documents from ACER and appreciate the continuous exchange, but to achieve the harmonisation there need to be a compulsory consultation process preceding the issuance of any guidance which allows market participants sufficient time to address the issues at hand – historically, ACER guidance has contributed to harmonization but also often brought insecurity/unclarity; how will this work in practice, will it apply also to similar cases, where to draw the line etc. By consulting draft guidance, a lot of question marks could be straightened and the guidance could be more relevant and consistent and thus more useful for the market.

Vattenfall is a European energy company with approximately 19,000 employees. For more than 100 years we have electrified industries, supplied energy to people's homes and modernized our way of living through innovation and cooperation. Our goal is to make fossil-free living possible within one generation. Everything we do and the decisions we take shall lead to this goal. This is the basis of Vattenfall's strategy, and we advocate for a regulatory environment that makes this transition possible – in the energy sector and beyond in transport, industry etc