

Inconsistent implementation of REMIT reporting obligations may discourage trading activity

Energy Traders Europe would like to bring the attention of the Ukrainian authorities to some of the recently proposed interpretations of the Law to Prevent Abuse in Wholesale Energy Markets that steer away from the practices typical for the EU energy market. We applaud Ukraine's determination in aligning its laws with the EU acquis, including REMIT (Regulation (EU) 1227/2011), yet in our experience swift implementation has already triggered corrections that could have been avoided. We note that the recent NEURC interpretation of the aforementioned Law can serve as an example of such situation, particularly since it stipulates that:

1. **All transactions concluded on Ukraine's border are expected to be reported** and the Regulator assumes both **sides of a transaction need to submit their reports independently.**
2. The Regulator suggests that **both intragroup transactions, as well as transit activity, need to be reported.**

Collectively, these requirements are different from EU practices and force entities to register on the Ukrainian market regardless of whether they undertake trading activity in the country or not. **For many companies this may prove to be challenging**, whereas no such requirement would exist under an harmonized REMIT regime, since:

1. It is allowed and common practice in the EU to **report transactions on behalf of a counterparty** and that is done **with no harm to transparency** (Implementing Regulation 1348/2014).
2. **Intragroup and transit activity have no direct impact on price formation in Ukraine**, making reporting of these transactions irrelevant for legislation preventing market abuse.

We also note that the intention to require reporting of transactions at the Ukrainian border is problematic and could be challenged, as it requires non-residents to report the transaction twice (i.e. to ACER and to NEURC), forces them to register on the local market, sign separate data transfer agreements and strive to be compliant with the rules which also stipulate that all communication should be done exclusively in Ukrainian.

In addition, we would like to highlight that the relevant NEURC's regulation aimed at implementing REMIT contains obligations related to backloading of historical transactions concluded in the period from 02.07.2023 to 02.07.2024. This implies the need to implement additional technical solutions to ensure compliance, even though there was no official guidance from NEURC in terms of storing and processing the required data before July this year. We would therefore suggest applying the backloading requirement only to those transactions that were performed starting from 2 July 2024 when NEURC has provided the market with official rules on data reporting.

Finally, to ensure full alignment with REMIT, it should be clarified that:

- the reporting obligation for trades in primary capacity, both for gas and power, is placed on the TSO and SSO. As such, TSO and SSO should also be asked to facilitate secondary capacity reporting.
- balancing cash out transactions are not deemed reportable.

Instead of pursuing the new reporting obligations, we encourage Ukrainian authorities to suspend the reporting requirement and engage in the already ongoing process of harmonized adoption of REMIT among Energy Community Contracting Parties, coordinated by the Energy Community Secretariat. This process will be much in the spirit of developing an internal market for energy in Europe and will not have a discouraging effect on energy imports to and exports from Ukraine. Such approach would also enable avoiding setting up of reporting systems that will become obsolete as soon as the Energy Community harmonisation process takes effect.

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