



Summary of the best EU practices in market monitoring and surveillance

Energy Security Project (ESP)

Online Workshop

February 11th, 2021

AGENDA

Experience with implementation across the EU

- Conclusions on NRAs and OMP monitoring and surveillance practices
- Cooperation of regulators

Conclusions and way forward

MAIN CONCEPTS

- Market monitoring - analysing the performance of a given market on relatively long timeframes. Main goal - to examine the market's efficient functioning, aiming to improve the liquidity and enable efficient price formation.
- Market surveillance - monitoring the individual market participants behaviour and the overall market transparency. It is partly but not entirely related to the regulation on market integrity and transparency (REMIT).
- NRAs have to cooperate under 3rd energy package and REMIT at a regional level and with other authorities as those of competition and of financial markets.
- NRAs and PPATs should observe international obligations and take benefit from world-wide experience.

CONCLUSIONS ON NRAS AND OMP MONITORING AND SURVEILLANCE PRACTICES IN EU AND ENC

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

The measures to be taken must ensure

- compliant implementation of the NRA monitoring duties following 3rd Energy Package and REMIT. Focus is on market performance, integrity and transparency.
- granting powers to NRA to investigate, enforce decisions, and cooperate with ECRB and with the other NRAs in Energy Community, as well as with the national authorities.

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

The measures to be taken must ensure

- granting powers to NRAs to require from participants any necessary data, observing the specific format according manuals of the ACER in case of REMIT.
- implementation of the NRA obligation to report results of its monitoring activity in both regular and ad-hoc basis.

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

PPATs shall implement obligations

- to establish and maintain effective arrangements and procedures to monitor administered markets
- to report results of their overall monitoring activities in regular / ad-hoc basis
- to report suspicions of possible REMIT violations in a timely manner

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

The measures to be taken must ensure

- the introduction by the Regulator of market monitoring indicators, including those provided by ACER manuals to support market abuse detection
- the introduction by the PPATs of the market monitoring indicators as well as the price indices to support market participants' trading

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

The measures to be taken must ensure

- implementation of the OMP obligations to offer to the market participants the service of reporting on their behalf
- the existence of RRM, which fulfil technical requirements
- a modern, efficient, compliant NRA / PPAT infrastructure to guarantee quality and security of data collected / transferred

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

The measures to be taken must ensure

- the implementation by regulator of monitoring/investigation/decision structures and by PPATs of monitoring structures avoiding any conflict of interest and undue influences
- the regulator and PPATs adequate staff resources and adequate internal procedures
- the competency and integrity of staff granted with market/participant oversight tasks

MONITORING AND SURVEILLANCE PRACTICES. REQUIREMENTS AND LESSONS LEARNED.

- Market participants shall build an internal organisational and procedural framework REMIT oriented.
- Existence of such organisation REMIT oriented
 - prevents risk of breaches
 - demonstrates the participant good will and shall positively influence the decisions of regulator on measures/sanctions

MONITORING AND SURVEILLANCE PRACTICES. ULTIMATE CONCLUSIONS.

- Success of implementing 3rd energy package and REMIT shall be measured with the success in creating an efficient, transparent, trustworthy market.
- The decision-makers should continue to pursue in Ukraine the building of such market and efficient market monitoring should be a leverage.
- This is why it is recommended to utilize the experience of EU countries, where for long time a market monitoring framework was built.
- Ultimately, we should remember that need for REMIT was born from lack of trust in energy markets. And its aim is to create such trust.

COOPERATION OF REGULATORS

- MUTUAL NRA COOPERATION
- COOPERATION WITH OTHER NATIONAL AUTHORITIES
- ACER
- LESSONS LEARNED

I. MUTUAL NRA COOPERATION IN EU

- In EU, following the establishment of ERGEG Regional Initiatives in 2006, regional cooperation of NRAs has been developed on a voluntary and legal basis.
- NRAs are obliged to closely consult and cooperate with each other, and to provide each other and ACER with any necessary information needed to fulfil their tasks under EU regulation.
- NRAs shall set up tools to better coordinate their decision-making process: guidelines, MoUs, letters of intent, agreements, joint declarations, etc.

I. MUTUAL NRA COOPERATION IN EU

- Market monitoring is not a domain where NRA mutual cooperation is required by 3rd Energy Package, while in other domains cooperation may be facilitated by ACER and CEER in EU and by ECRB in Energy Community.

REMIT obliges NRAs to mutually cooperate

- NRAs cooperate with ACER and other NRAs (other NRAs via ECRB – in REMIT of Energy Community), to carry out their duties.
(Art. 16, REMIT EU / REMIT Energy Community)

I. MUTUAL NRA COOPERATION IN EU

- In EU, under REMIT, the NRAs work together and with ACER, the modalities of cooperation being set out in **MoU between ACER and NRAs**.

CASE OF EU NRAs COOPERATION

- Cooperation can be directly established under the umbrella of REMIT Article 17 and the Multilateral MoU between ACER and NRAs.
- Hence, other MoUs are not required.

CASE OF COOPERATION WITH NON-EU NRAs

- MoUs can be a necessary step to enter into cooperation.
- Letters of intent may be signed with regard to informal information exchange, as in the case of the Swiss and Austrian NRAs.

I. MUTUAL NRA COOPERATION IN EU

MOU PROVISIONS THAT HAVE PROVEN TO BE HELPFUL IN THE PRACTICE

- 3-tier structure: political, operational, working level.
 - Meetings, working methods, voting rules, are defined.
 - Participation of stakeholders to increase transparency and acceptance unless certain aspects of cooperation are confidential.
- MoUs are non-binding instruments undertaken on a **voluntary** basis.
 - The elements contained in an MoU must reflect the concrete cooperation and should be **customized** according to the needs and requirements of the parties.

I. MUTUAL NRA COOPERATION IN ENERGY COMMUNITY

2020/01 ECRB-EnC: *“Decision of 7 August 2020 of the Energy Community Regulatory Board on cooperation and coordination of Contracting Parties’ national regulatory authorities under Regulation 1227/2011 on wholesale energy market integrity and transparency.”*

HOW COOPERATION AND COORDINATION WORK:

- NRAs inform ECRB on their suspicions on breaches in their Contracting Party or in other CP. Information shall be submitted to the ECRB using a template established by Procedural Act.
- ECRB REMIT working group shall agree on the next steps:
 - not taking further actions,
 - requesting additional information,
 - requesting the regulatory authority concerned to continue the investigation
 - establishing an investigatory group.
- Works of investigatory group are facilitated by ECS.
- ACER representatives may be invited to participate.
- Works of investigatory groups are consultative.

2. COOPERATION WITH OTHER NATIONAL AUTHORITIES

BOTH 3RD ENERGY PACKAGE AND REMIT OBLIGE NRAS TO COOPERATE WITH OTHER NATIONAL AUTHORITIES

- Regulatory authority cooperate with the national competition authority and the financial market regulators or the Commission in conducting an investigation relating to competition law. (Art.37-4.b, Directive 2009/72/EC)
- NRAs, financial authorities and competition authority establish forms of cooperation to ensure the enforcement of REMIT and relevant financial and competition law. (Art.16 REMIT)

2. COOPERATION WITH OTHER NATIONAL AUTHORITIES

COOPERATION METHODS DEPEND ON NATIONAL LEGISLATION

- In Great Britain the NRA and competition authority have concurrent powers under competition law
- In Germany the Federal Network Agency and Federal Cartel Office jointly enforce REMIT and monitor the market, working with Federal Financial and Stock Exchange supervisory authorities.
- In other countries cooperation is only ad-hoc.

2. COOPERATION WITH OTHER NATIONAL AUTHORITIES

THE MEMORANDUMS

- a) between energy regulator and financial market authority
e.g.: *“Memorandum of Understanding between the Commission de Regulation de L’Énergie and the Autorité des Marchés Financiers” (FRANCE)*

- b) between energy regulator and competition authority
e.g.: *“Memorandum of Understanding between the Competition and Markets Authority and the Gas and Electricity Markets Authority” (GREAT BRITAIN)*

- c) between energy regulator and organized market places
e.g.: *“Multilateral Memorandum of Understanding between the Nordic and Baltic National Regulatory Authorities and Nord Pool Spot”*

2. COOPERATION WITH OTHER NATIONAL AUTHORITIES

MoU between the National Energy Regulator and Financial Markets Authority (France)	MoU between the Competition Authority and the Gas and Electricity Authority (GB)	MoU between the Nordic and Baltic NRAs and Nord Pool Spot
Purpose	Purpose	General principles and scope
Scope of Application	Context	
Principles of Information and Cooperation	General cooperation	Cooperation and coordination
Referrals to one Authority by the other one	Part A – Cooperation in relation to the competition prohibitions (Competition Act 1998 and Articles 101 and 102)	<i>Cooperation on market monitoring</i>
Requests for Assistance or Information		<i>Cooperation at Union, regional, and national level</i>
Quarterly Bilateral Meetings	Part B – Cooperation in relation to the market provisions: market studies and market investigations (Enterprise Act 2002)	<i>Notification by NPS of suspected breaches</i>
Use of Information Received		<i>Investigation and enforcement of market abuse</i>
Confidentiality		<i>General procedures for the cooperation</i>
Public Communication		<i>Public communication</i>
Adaptation of the Memorandum		Professional secrecy
Term and Termination		Final provisions
Entry into Force		

3. TYPES OF COOPERATION DEVELOPED BY ACER

- Establishment of working groups, task forces, and expert groups.
- Establishment and coordination of investigatory groups.
- Cooperation at Union level and beyond
 - a) MoU between ACER and NRAs
 - b) MoU with ESMA
 - c) MoU between ACER and OMPs
 - d) MoUs with Third Countries' Authorities (FERC)

3. TYPES OF COOPERATION DEVELOPED BY ACER

MoU with NRAs	MoU with ESMA	MoU with OMPs	MoU with Third Countries' Authorities (FERC)
General principles and scope	General principles and scope	General principles and scope	General provisions
Cooperation on wholesale energy market monitoring principles and practices	Cooperation and coordination	Cooperation on wholesale energy market monitoring principles and practices	Scope of supervisory consultation, cooperation, and the exchange of information
Ad hoc requests for information and clarification	Request for assistance	Ad hoc requests for information and clarification	Execution of requests for assistance
General procedures for the cooperation		General procedures for the cooperation	
Professional secrecy		Professional secrecy	Confidentiality of information and onward sharing
Publication		Publication	
Amendments to the MoU	Final provisions	Amendments to the MoU	Modifications and execution of MoU
Entry into effect and termination		Entry into effect and termination	Discontinuation

4. LESSONS LEARNED.WHAT SHOULD BE DONE BY CPS.

WITHIN THE COUNTRY

- There is an experience in EU where under REMIT the monitoring process is led by ACER. As EU-wide monitoring entity, ACER has established cooperation with most relevant OMPs and with ESMA.
- As a leading monitoring entity in its country, a NRA in Energy Community should follow example of ACER and set cooperation with the homolog authorities (in the country) for financial market and competition and with OMPs. The examples of such MoU at national level in EU lead to the same conclusion.

4. LESSONS LEARNED.WHAT SHOULD BE DONE BY CPS.

WITHIN THE ENERGY COMMUNITY

- As ACER has established a MoU with third countries authorities (FERC), a NRA in EnC may sign a MoU with ACER, without prejudice of relation with ECRB.
- Such MoU is for the sake of sharing knowledge, and not because of Ukraine's proximity to EU national markets (monitored by ACER), once ACER and NRA from such EU MS may be invited by ECRB in the investigatory groups.
- NRAs in a CPs shall entirely observe the procedural acts of ECRB and participate in Energy Community related structures.
- No need for MoUs with NRAs in other CPs once the cooperation framework is set by ECRB procedural acts.

CONCLUSIONS AND WAY FORWARD

MONITORING AND SURVEILLANCE PRACTICES. FINAL CONCLUSIONS.

- Ex-post monitoring identifies the regulation flaws that determine inefficiencies and permit market abuse.
- This may contribute to the adjustment of rules to remove inefficiencies and prevent market abuse. Preventing abuse is a key to building attractive energy markets, which further means liquid markets.
- Observing international obligations and national law, a Contracting Party in EnC, such as Ukraine, may utilize world-wide good practices to benefit from this wide experience.
- NRAs have to cooperate at a regional level and with other authorities at national level to fulfil their duties under REMIT and 3rd Energy Package.

ESP SUPPORT FOR THE PRACTICAL IMPLEMENTATION

ESP, may, as requested by the State Organizations help out with:

- Provide further human and institutional training and capacity building concerning the organizational and infrastructural (IT) matters related to implementation of REMIT:
 - Choosing the best organizational alternatives,
 - Developing the necessary secondary legislation, rules and standards,
 - Developing budgets and tariffs aimed at addressing and sustaining the functions
- Provide assistance in terms of addressing infrastructural (IT) challenges related to the obligations under REMIT:
 - Establishing the requirements for the systems, including the technical requirements,
 - Financing and procurement of the relevant IT infrastructure (software and hardware)
- Future development of a tariff securing the sustainability of the system;
- Supporting the operation and work of any relevant working groups.

— THANK YOU

This document is made possible by the support of the American people through the United States Agency for International Development (USAID). The contents of this document are the sole responsibility of Tetra Tech ES, Inc., and do not necessarily reflect the views of USAID or the United States Government. This document was prepared by Tetra Tech ES, Inc., USAID Contractor for the Energy Security Project (ESP), USAID contract 72012118C00003.

