



Electricity regulators

Organizational set-ups for market monitoring

Distribution of market surveillance responsibilities at
Market and System Operators

January 14th, 2021

AGENDA

- DISTRIBUTION OF MONITORING ROLES UNDER REMIT IN EU
- ACER ORGANIZATIONAL SET-UP REGARDING MARKET MONITORING
- NRA'S ORGANIZATIONAL SET-UP REGARDING MARKET MONITORING IN EU COUNTRIES
- DISTRIBUTION OF MARKET SURVEILLANCE RESPONSIBILITIES AT MARKET AND SYSTEM OPERATOR
- PRELIMINARY LESSONS LEARNED FOR THE NEURC

DISTRIBUTION OF MONITORING ROLES UNDER REMIT IN EU

SCOPE OF MONITORING: EU ENERGY LAW, EU COMPETITION LAW

Market monitoring precedes REMIT

National Regulatory Authorities

Focus on

- **EU Energy Law:** about 15 directions within EU Electricity Directive: transparency, prices, unbundling, anticompetitive practices etc.
- **EU Competition Law.** NRA, MO and TSO provide support and cooperate with Competition Authority in the domain of EU Competition Law.

Competition Authorities

Focus on

- **EU Competition Law:** horizontal and vertical agreements, concerted practices, (101, TFEU), abuse of market power (102, TFEU, art. 11 UA Law on electricity market).
- **EU Energy Law.** Competition authorities may intervene, if required by NRAs, in case of occurrence of anticompetitive practices.

SCOPE OF MONITORING: EU REMIT LEGISLATION

Prohibition on market manipulation and insider trading

- EU: ACER, the main monitoring entity
NRAs “may” monitor; they mandatorily investigate
PPATs perform market surveillance to report suspicious transactions
- EnC ACER not active
NRAs, the main monitoring and investigating entities
PPATs perform market surveillance to report suspicious transactions

ROLES OF PPAT BESIDES (BEFORE) REMIT AND UNDER REMIT

Market surveillance units within the power exchanges and market operators.

- Active almost since the organised marketplaces have started activity
- Besides and before REMIT, PX/MO mainly monitor
 - a. OMP trading rules observance by participants
 - b. Abnormal, inappropriate, or anticompetitive market participants behaviour
 - c. Administrated markets' competitiveness (concentration indicators)
 - d. Prices evolution
 - e. Liquidity

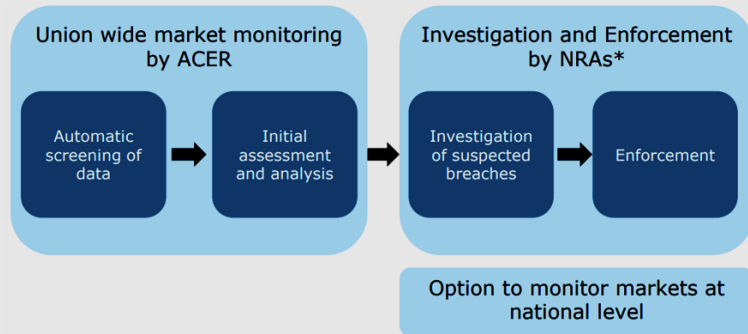
Under REMIT, market operators/power exchanges, transmission system operators have the obligation ...

- to monitor and to take all necessary measures for an effective monitoring
- to report to NRAs suspicions on participants' breaches

DISTRIBUTION OF REMIT MONITORING ROLES IN EU AND EnC (I)

NRAs

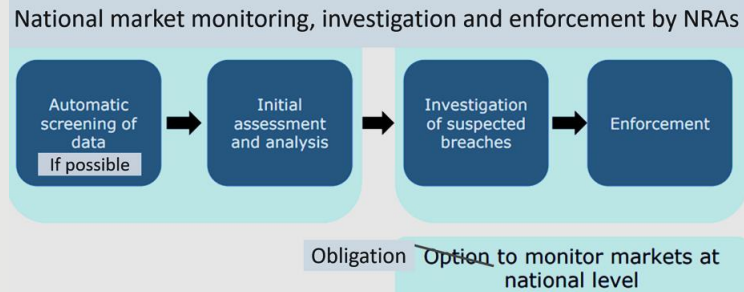
European Union



REMIT, 7.1 The Agency shall collect the data in order to monitor trading activity in order to detect prohibited conducts.

REMIT, 7.2 National regulatory authorities and ACER shall cooperate in carrying out the monitoring and for this purpose, NRAs shall have access to relevant information held by the Agency. NRAs may also monitor at national level.

Energy Community



REMIT, 7.1 NRAs shall monitor trading activity to detect prohibited conducts. For this purpose they may use ACER manuals and may adopt rules requiring data provision from market participants.

REMIT, 7.2 NRAs shall cooperate via the ECRB in carrying out the monitoring.

DISTRIBUTION OF REMIT MONITORING ROLES IN EU AND EnC (2)

PPATs

European Union & Energy Community

REMIT, 15

- The Persons Professionally Arranging Transactions in wholesale energy products shall notify the national regulatory authority suspicious transactions representing prohibited conducts.
- PPATs shall establish and maintain effective arrangements and procedures to identify occurrence of prohibited conducts.

DISTRIBUTION OF REMIT MONITORING ROLES IN EU AND EnC (3)

NRAs

- Role of investigating infringement cases belongs to NRAs (not ACER/ECRB).
- Investigation, decisions, sanctions shall be **based on national law provisions**.
- NRAs may act alone or in cooperation with other NRAs under coordination of ACER/ECRB.
- Investigation by NRAs may start following
 - the PPATs' reports.
 - the ACER screening (in EU)
 - the NRA own screening (in EU and EnC)

DISTRIBUTION OF REMIT MONITORING ROLES IN EU AND EnC (4)

PPATs

- PPATs neither investigate breaches, nor decide, nor enforce decisions.
- Infringements under REMIT may, however, imply breaching by participants of the OMP trading rules.
- Analysis of breaches and sanctions are performed by PPATs **based on market trading rules.**
- Sanctions applied by PPATs are limited to suspension from trading or termination of participation agreement.

WHO, FOR WHAT AND WITH WHOM REGISTERS UNDER REMIT(I)

Registration of wholesale market participants with NRAs

- In the EU and in Energy Community, participants intending to trade wholesale energy products with delivery in EU, respectively in a Contracting Party register with NRA before transaction takes place.
- “Market participants” means any person who enters into transactions in wholesale market, which for REMIT purposes includes contracts for the supply to final customers with a consumption capacity greater than 600 GWh/year.
- In EU, the participants established or resident in a Member State register with national NRA. The others register with NRA in member state where they are active.
 - ACER administrates Centralized European Registry of wholesale Energy Market Participants (CEREMP).
- In Energy Community, the participants intending to trade wholesale energy products register with national NRA in the Contracting Party where delivery takes place.
 - ECRB administrates Energy Community central register.

WHO, FOR WHAT AND WITH WHOM REGISTERS UNDER REMIT(2)

Registration as RRM

MP, OMP and TSO obligations related reporting

- Obligations of reporting to ACER (in EU) / to NRAs (in EnC) the contracts for energy supply and transportation from secondary market, and of publishing inside information belong to market participants.
- Obligation to offer a reporting service contract for the trades they organize belongs to OMPs.
- Obligation to report electricity transportation contracts from primary allocation and the electricity nominations belongs to TSO.

Who registers as RRM

- To fulfil these obligations, MP, OMP and TSO either register as RRM or delegate the responsibility.
- To provide reporting service, other entities than MP, OMP and TSO register as RRM.
- In the ACER list of Registered Reporting Mechanisms there are 119 entities.

WHO, FOR WHAT AND WITH WHOM REGISTERS UNDER REMIT(3)

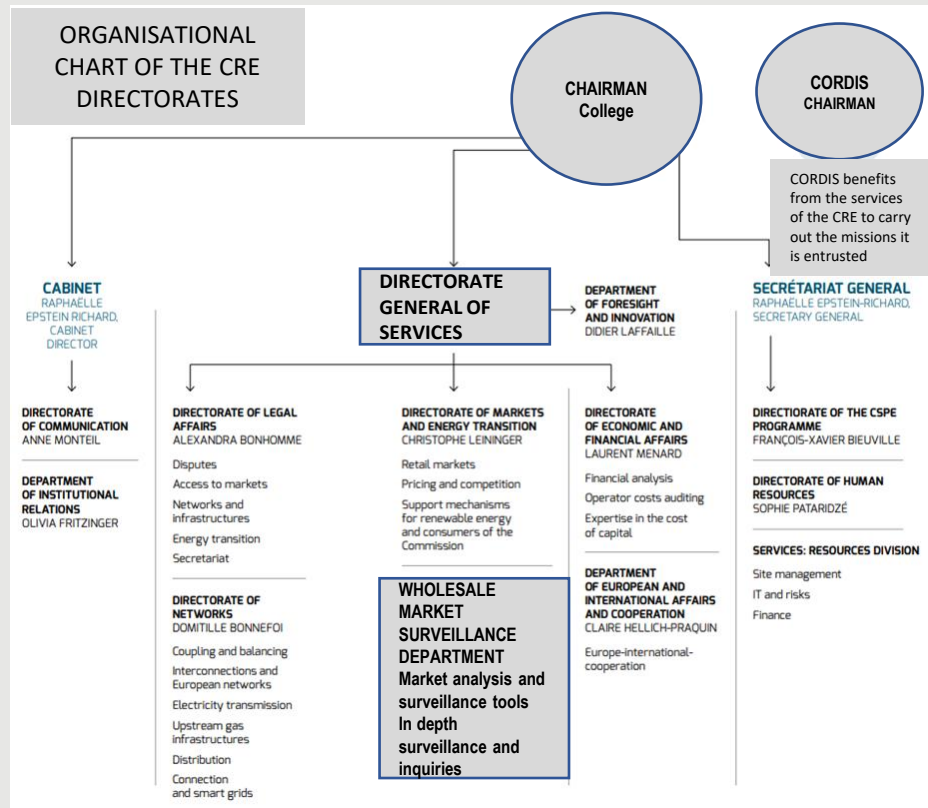
Registration as RRM

- OMP, to report standard contracts (OMIE, Nord Pool Spot, OPCOM, OMIP, OTE, POLPX, ICE, OKTE, GME, EXAA, EPEX Spot, HUPX, EEX, LAGIE, BORZEN)
 - OMP, to report non-standard contracts (Nord Pool SPOT, OPCOM, OMIP, POLPX, ICE, OKTE, GME, HUPX, EEX, LAGIE, BORZEN)
 - OMP, to report electricity rights (OPCOM, OMIP, ICE, OKTE, GME)
 - OMP, to report total allocation (OPCOM, OMIP, OKTE, GME)
 - OMP registered to report electricity nominations (OPCOM, OKTE, BORZEN)
- OMP not registered to report electricity rights, total allocation, electricity nominations (OTE, OMIE, Nord Pool Spot, EXAA, EPEX SPOT, HUPX, EEX, LAGIE, SEMO)
 - OMP not registered to report non-standard contracts (OTE, OMIE, EPEX SPOT, EXAA, SEMO)
- Service providers, to report standard contracts, OTCs, electricity rights, total allocation, electricity nominations (Solien, Trayport, Keller, Webware Internet Solutions GmbH)
- TSO, to report electricity nominations (Energynet, NGI, EirGrid, RTE, APG, CEPS, Elia, Mavir, PSE, Red Electrica, Tennet, Amprion, 50Hertz, IPTO)
 - TSO, to report electricity rights (NGI, EirGrid, RTE, Mavir, Red Electrica, IPTO).
 - TSO, to report total allocation (NGI, RTE, Mavir, Elering, Red Electrica, Tennet, IPTO). But reporting is done by JAO.
 - TSO, to report standard contracts (Amprion, 50Hertz, APG, RWE, Tennet GMBH)
 - TSO, to report non-standard contracts (RTE, TENNET, PSE). In Bulgaria national holding.
- Allocation Platforms, report total allocation (JAO, CAO in SEE)

ACER ORGANIZATIONAL SET-UP REGARDING MARKET MONITORING

NRA'S ORGANIZATIONAL SET-UP REGARDING MARKET MONITORING IN EU COUNTRIES

CONCLUSIONS ON NRAs PRACTICES (I)



Model I

Separation of monitoring & investigation from decision, is granted to an independent body

French and British NRAs have adopted a model which:

- Grants the role of monitoring to specialized departments.
- Grants the role of investigation to ad-hoc mandated persons.
- Unbundles decision acts from surveillance and investigation and grants the decision role to an independent body, not to a person.

CORDIS in the CRE and Enforcement Decision Panel (EDP) in the Ofgem act independently from surveillance analysts and investigators as well as from their leadership.

CONCLUSIONS ON NRAs PRACTICES (2)

Model 2 Separation of monitoring and investigation and bundling of the investigation with decision

ROMANIA. MARKET MONITORING AND INVESTIGATION AT ANRE

- Investigation Division, reporting to the President deals entirely with REMIT.
- Monitoring and REMIT division, reporting to the Vice-President deals inter alia with REMIT.

THE FRAMEWORK AT ROMANIAN REGULATORY AUTHORITY

- Separates monitoring activity from investigation (the two divisions report to different persons).
- Grants decision to the NRA President, based investigation report, which includes proposals for sanctions, therefore the decision on case, either approved or not by the final decision of the President (which also takes decision on enforcement measures) belongs to the investigator.

CONCLUSIONS ON NRAs PRACTICES (3)

The German Federal Network Agency and the Federal Cartel Office

- According to the Energy Industry Act and the Act against Restraints of Competition the Federal Network Agency and the Federal Cartel Office monitor the electricity sector.
- The Federal Cartel Office is responsible with monitoring the degree of transparency, (wholesale prices, level and effectiveness of market opening). It monitors the level of competition at the wholesale and retail levels.
- The Federal Network Agency publishes an annual monitoring report, which includes the report of the Federal Cartel Office.
- To act jointly and coherently in order to fulfil their specific monitoring responsibilities, the two authorities set commonly a **“market transparency unit”**.

DISTRIBUTION OF MARKET SURVEILLANCE RESPONSIBILITIES AT MARKET AND SYSTEM OPERATOR

OTHER ROLES THAN MARKET SURVEILLANCE IN THE CONTEXT OF REMIT

Market Operator

- Reporting under REMIT the energy supply trades (including orders) on behalf of participants.
- Publishing inside information on behalf of participants.

Transmission System Operator

- Transfer the fundamental data to NRA (ENTSO-E fundamental data and electricity nominations).
- Reporting of transportation contracts from primary allocation.

- By law, the reporting as RRM by MO and/or TSO may be set as mandatory at least for a transitory period. After transitory period, this obligation could be delegated to an existing RRM, if such RRM exists.
- Optionally or mandatory, as considered by NEURC MO and/or TSO implement an Inside Information Platform.

ORGANISATIONAL SET-UP AT MO AND TSO (I)

“Persons professionally arranging transactions in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or 5.” (REMIT, art.15)

ACER GUIDANCE ON PPATs DUTY TO ESTABLISH AND MAINTAIN EFFECTIVE ARRANGEMENTS AND PROCEDURES

Examples of alternative governance

Market Monitoring Unit (MMU)

MMU is only accountable towards an Independent Body, not involved in the daily management of the PPAT.

Market Monitoring Department (MMD)

The market surveillance team operates as any other department within the organization, reporting to a Director.

Market Monitoring Committee (MMC)

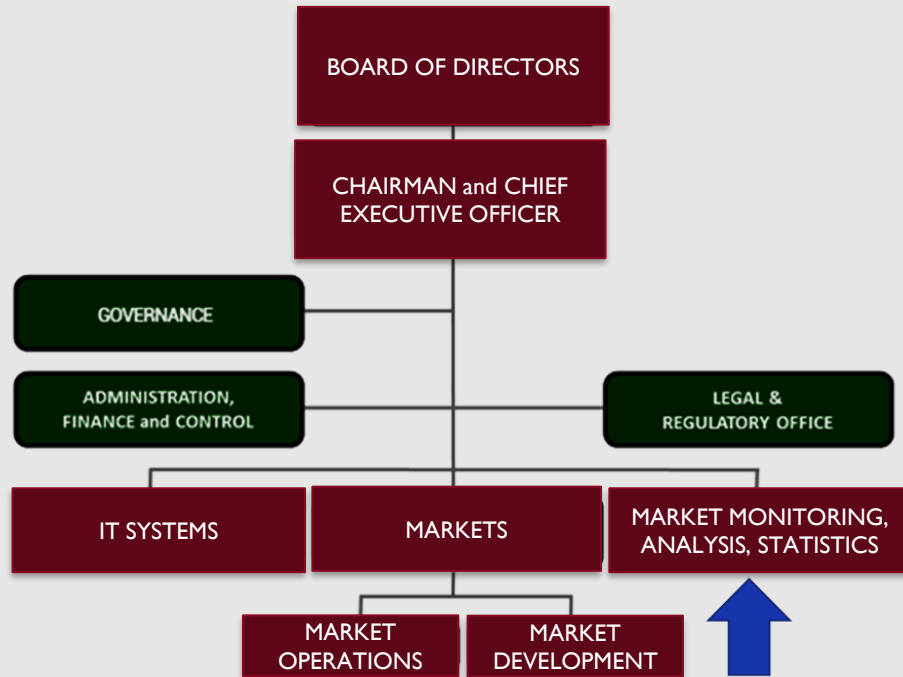
The market surveillance team consists of a number of experts, working in different parts of the PPAT and is accountable towards the Management Team as a whole or to a designated Director.

ORGANISATIONAL SET-UP AT MO AND TSO (2)

ACER GUIDANCE ON PPATs DUTY TO ESTABLISH AND MAINTAIN EFFECTIVE ARRANGEMENTS AND PROCEDURES

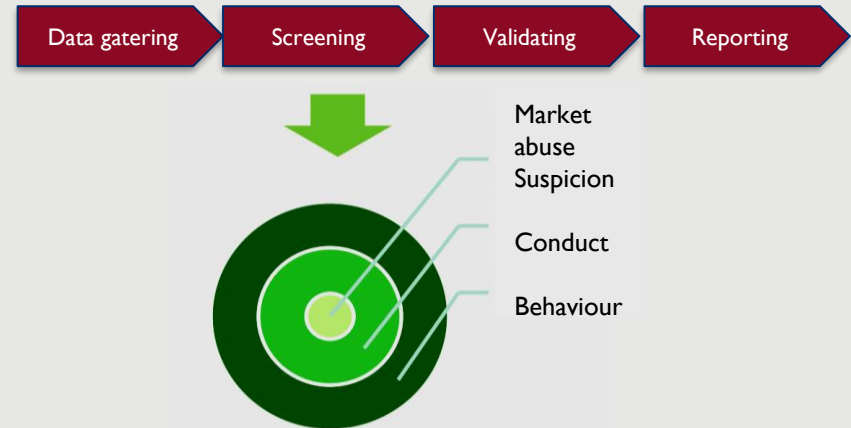
Adequacy of resources:	Availability of some fundamental resources, which include human resources, analytical tools, and data/information.
Human resources policy:	Management of conflicts of interest.
Market surveillance team:	Relevant skills and able to devote the required time and operate in a timely manner; implementation of appropriate segregation measures.
Communication with other units:	The team needs to keep regular contact with other functions within the PPAT, to get access to the information needed to perform its activities.
Confidentiality:	The information collected by the market surveillance team for the purpose of investigating an anomalous event shall be considered confidential and systems that restrict the access to such information shall be implemented.

ORGANISATIONAL SET-UP AT MO AND TSO (3)

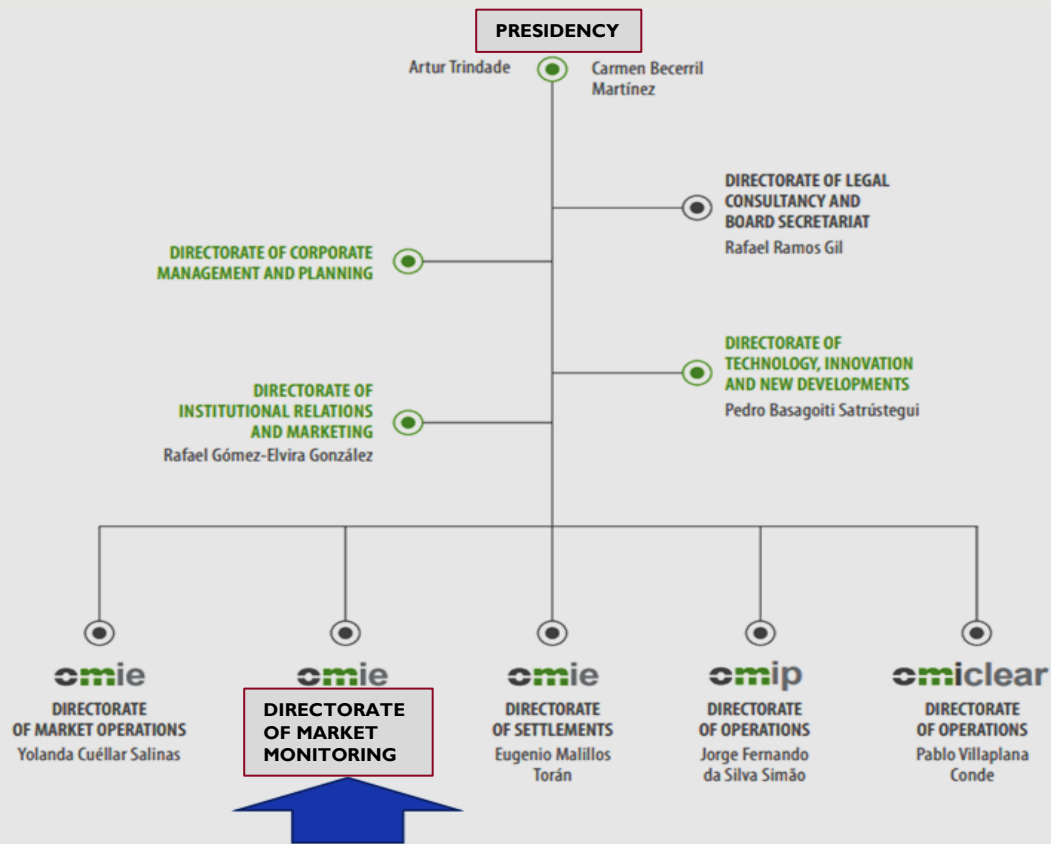


GME, THE ITALIAN ENERGY EXCHANGE

- RRM and IP
- MMU governance model
- Procedures:
 - 1) Policy
 - 2) Risk
 - 3) Unit



ORGANISATIONAL SET-UP AT MO AND TSO (4)



OMIE, THE IBERIAN POWER MARKET OPERATOR

- OMIE has adopted the MMU model.
- Administrated markets cover both electricity deliveries in Spain and Portugal and OMIE reports to both CNMC and ERSE.
- Monitoring scope was expanded to cover REMIT requirements addressing PPATs.

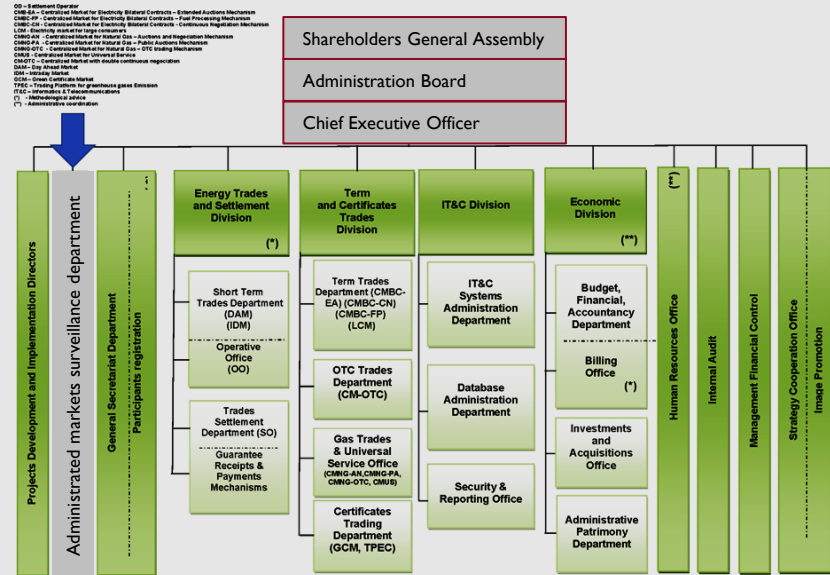
ORGANISATIONAL SET-UP AT MO AND TSO (5)

TOWAROWA GIEŁDA ENERGII S.A, THE POLISH ENERGY EXCHANGE

- Market Surveillance is organized within Market Surveillance Department.
- MSD supervises the members of Commodities Market and Organized Trading Facility regarding their compliance with the prohibition of manipulation, use of inside information or other regulations.
- MSD shall report any justified suspicion of market abuse to the Polish Energy Regulator ERO.

ORGANISATIONAL SET-UP AT MO AND TSO (6)

OTHER PPATs: OTE (Czech Republic) and OPCOM (Romania)



- No monitoring unit or department in OTE. Monitoring puts together people from different departments, reporting to the board.
- At OPCOM market surveillance has been organised as MMD until 2010. Now is organised as MMU.

ORGANISATIONAL SET-UP AT MO AND TSO (7)

JOINT ALLOCATION OFFICE (JAO)

- In 2015, the two regional allocation offices in EU have merged to create the Joint Allocation Office, a joint service company of 25 TSOs in EU.
- Under REMIT, JAO S.A does not report on behalf of the Participants, but only on behalf of the Transmission System Operators (TSO's).
- JAO as a PPAT had to establish and maintain effective arrangements to identify breaches under REMIT.
- JAO has established a Market Surveillance Committee (MSC).

ORGANISATIONAL SET-UP AT MO AND TSO (8)

CONCLUSIONS

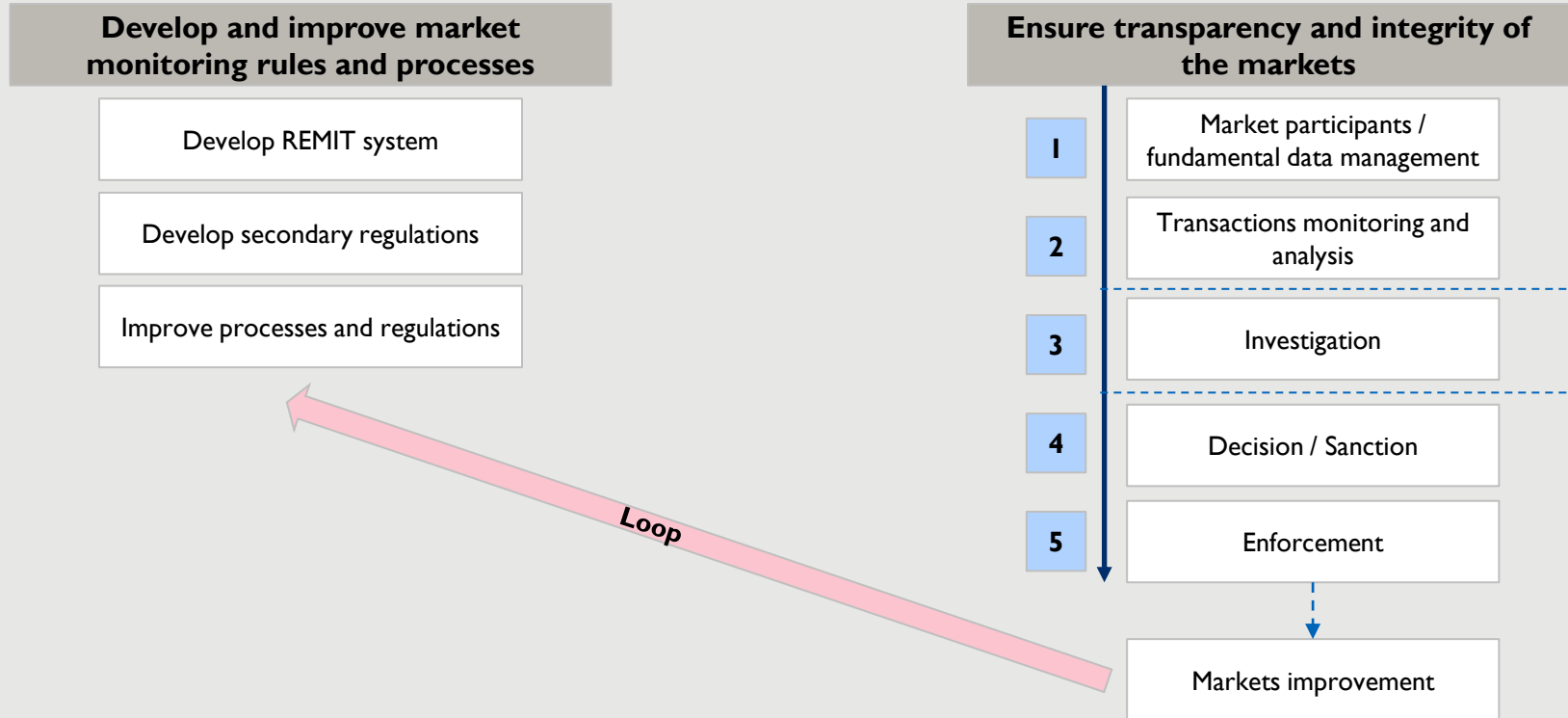
- ACER guidelines: how market surveillance activity should be organized and documented by OMPs
- Most important principles:
 - avoiding conflict of interest,
 - providing clear definition of market surveillance role,
 - clear daily routines and
 - traceability
- The guidance provides three alternatives for internal organization
 - Market Monitoring Unit,
 - Market Monitoring Department
 - Market Monitoring Committee
- Market Monitoring Unit alternative has been chosen by GME, OMIE and OPCOM.
- No separate unit or department at OTE. Surveillance is “per process”.
- Joint Auction Office JAO in Luxemburg has chosen the MSC alternative.

FINAL CONCLUSIONS

- REMIT provides clear indication on NRAs / PPATs roles in market monitoring.
- ACER guideline provides a (rather flexible) guidance on organizational set-up at PPAT to undertake the monitoring obligations.
- No such guidance regarding regulators, which in EU have chosen different ways,
- French CRE and British OFGEM have same approach by separating decision from monitoring and investigation hence providing a valuable example.
- The “models” we have described help to structure the available information, however not being officially formalised, described or recommended.
- The organisational set-up should be flexible and capable of evolving, as the market structure changes.

PRELIMINARY RECOMMENDATIONS FOR THE NEURC

There is a consensus that major roles and responsibilities of the NEURC with regards to wholesale market monitoring are the following



The NEURC should start thinking at the right organizational model for REMIT that best fits its current structures and the legislations / Bylaws which regulate the functioning of the NEURC

The HICD team will help the NEURC in this task and is ready to provide any support in terms of organizational structuring, sizing, staffing, JDs development, upskilling and so on

Our analysis of the current structure of the NEURC helped us formulate some PRELIMINARY organizational principles, which have to be discussed and developed later

Align with the
ACER's own
organization for
REMIT
management

+

Integrate within
the current
organizational
structure of the
NEURC

A new, **STANDALONE REMIT**
organizational unit is necessary

Separation between the REMIT
“regulations development” function and
the REMIT “operations” function

OPERATIONS: Separation between
the monitoring function and the
investigations function

Separation between the investigations
function and the decision function

Sanctions and enforcement should be
kept separated from REMIT operations

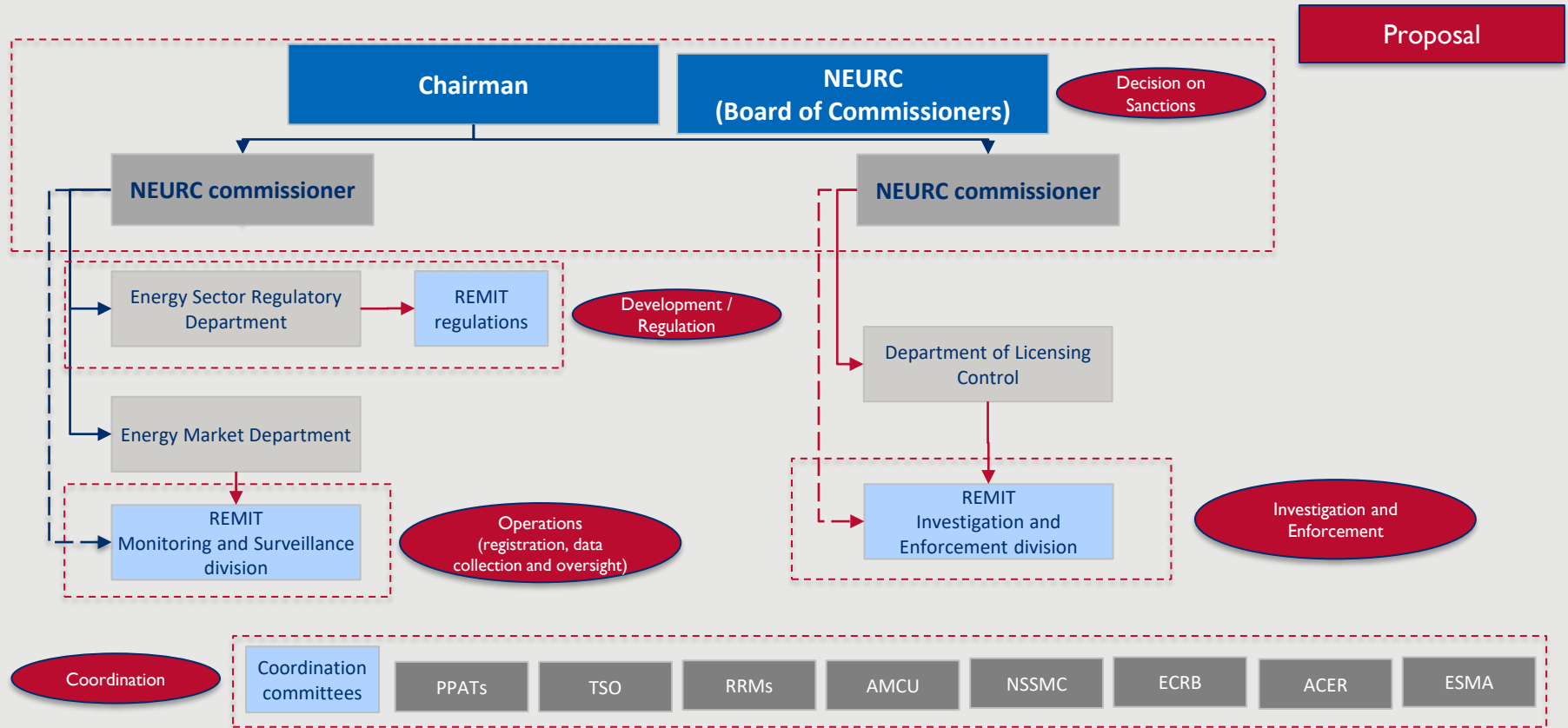
Strong collaboration is required with
ECRB, ACER, ESMA, AMCU, NSSMC,
PPATs, etc.

Structural impacts

Proposal

- REMIT cannot be managed within a current, existing unit
- REMIT Development: REMIT regulations should be embedded within the energy regulation department
- REMIT Operations should be made of 2 separate units, one dealing with registration / monitoring and one dealing with investigations
- REMIT-related sanctions should be taken by the organizational unit responsible for sanctions as per the law and the internal processes of the NEURC
- REMIT-related decisions should follow the usual decision-making / sanctions process in place at the NEURC as defined by its bylaws and the Ukrainian legislation
- Collaboration mechanisms should be created under the form of newly created bilateral commissions or working groups in which representatives from various REMIT-related units

At this stage, It seems logical to us that the future REMIT units should be created under the commissioner responsible for energy markets and energy regulation



THANK YOU



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