

***EFET Insight into* Surveillance of the European Wholesale Energy Markets**

What is surveillance of wholesale energy markets?

Market surveillance is the process of wholesale energy markets in order to build trust and identify potentially abusive trade practices. Market surveillance helps to detect potential market abuse and in order to ensure markets operate fairly and transparently and to increase confidence. Market rules - such as the Regulation on Wholesale Energy Market Integrity and Transparency (REMIT) and the Market Abuse Regulation (MAR) - prohibit insider trading, unlawful disclosure of inside information and market manipulation.



To avoid confusion

The Regulation on Wholesale Energy Markets Integrity and Transparency (REMIT)

→ In force since 2011. Provides the regulatory framework for reporting and preventing market abuse at the wholesale power and gas markets. More specifically, REMIT:

- Defines and explicitly prohibits market abuse, including market manipulation, insider trading, unlawful disclosure of inside information as well as attempts to undertake any of these;
- Requires effective and timely public disclosure of inside information by market participants;
- Obliges firms professionally arranging transactions to report suspicious transactions;
- Requires market participants to provide a record of wholesale energy market transactions, including orders to trade and fundamental data.

The intention of REMIT is to ensure greater transparency in the European wholesale energy markets, reducing the risk that participants manipulate the market or distort price signals. REMIT is supervised by national energy Regulatory Authorities and the European Union Agency for the Cooperation of Energy Regulators (ACER).

The Market Abuse Regulation (MAR) → This regulation targets financial instruments, which includes electricity and gas derivatives and emissions allowances. MAR is supervised by the national financial regulators and the European Securities and Markets Authority (ESMA).

What is market abuse?

Market abuse refers to certain types of trading behaviours, such as insider trading and market manipulation, including attempted insider trading and market manipulation. Market abuse surveillance involves capturing trade data, and then monitoring and analysing it to detect a potentially illegal trading behaviour.

- **Insider trading** → When a person who is in possession of inside information uses that information to trade (or to decide not to trade) or who induces a third party to trade based on that information.
- **Market manipulation** → When a person enters into a transaction which gives (or is likely to give) false or misleading signals to the market on the supply, demand or pricing of wholesale energy products or disseminates information which gives (or is likely to give) such false or misleading signals.



Illustrative Examples

Insider trading in relation to wholesale energy products: A trader finds out that a power plant will be down for unplanned emergency maintenance for 5 hours, information that is not yet made public by the operator of the plant. He buys power in anticipation that the price will rise due to the unavailability of the power plant. Information about the unplanned maintenance is likely to meet the criteria of inside information (as it is non-public, precise and would have likely a significant price impact once published), thus, trading on that basis is illegal.

Market manipulation in relation to wholesale energy product: On the intraday market, a company sells 1,000 MW of electricity to another market participant. After a few minutes, both companies reverse the deal – trading the same volume at the same price. These transactions gave the impression to the market that liquidity at that price level was higher than genuine trades would have justified.

ACER produces and updates **non-binding guidance on the application of REMIT**. It provides in-depth information on specific types of market abusive practices and helps to apply the concepts of inside information, insider trading and market manipulation.

Who is responsible for conducting market surveillance?

The regulations impose various obligations on market participants, trading venues and regulators, which are, in reality, performed in parallel.

→ **Regulators:** Under REMIT, ACER is responsible for monitoring wholesale energy markets to detect market abuse. National Regulatory Authorities are in charge of investigating suspicious cases of market abuse and enforcing REMIT within their national legal framework. They cooperate to monitor the wholesale energy markets and the national regulatory authorities are sanctioning REMIT breaches.

→ **Energy exchanges and broker platforms:** REMIT requires that Parties Professionally Arranging Transactions – which refers among others to energy exchanges and broker platforms – must have market conduct rules in place and must notify potential breaches of law to the regulator.

→ **Market participants:** MAR requires market participants to apply a proportionate and appropriate approach to monitoring their own trading activities.

Why do we need a robust, transparent and proportionate market surveillance regime?

It builds trust among all market players



It protects the integrity of the market and increases consumer



It ensures a level-playing field for all market participants and ensures transparency in price formation



What are the potential penalties for market abuse?

There are serious sanctions for market manipulation. While implemented at the national level, meaning they differ from country to country, they can include the withdrawal or suspension of permissions to trade and financial penalties (including the confiscation of profits gained or losses avoided as a result of the breach). Individuals and companies can also be held criminally liable for violating market regulations with potential imprisonment of the acting individuals.



In summary

European energy markets are some of the most heavily regulated in the world with the penalties for a breach of these regulations extremely high. This level of regulation builds trust among all parties and ensures that markets function efficiently. Effective market surveillance is a dynamic process which relies on an ongoing dialogue between regulators and market participants to ensure that the rules reflect new developments, that the compliance cost is proportionate to the risk being mitigated and that the rules are clear and well understood.

For more information, feel free to contact us at secretariat@efet.org