

# Study

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Study on the application of Belgian and European legislation relative to the transparency of the Belgian wholesale natural gas and electricity markets.

carried out pursuant to Article 23, §1, 1°, and 2° and § 2, second paragraph, 2°, 3°, 4°, 5° and 8°, of the law of 29 April 1999 on the organisation of the electricity market and Article 15/14, §1, 1° and 2° and § 2, second paragraph, 2°, 3°, 5°, 5°bis and 16°, of the law of 12 April 1965 on the transmission of gaseous and other products by pipeline

Non-confidential

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## EXECUTIVE SUMMARY

The 2008 financial crisis highlighted the weaknesses in financial markets, which hastened the implementation of new and more coercive regulatory measures in three pieces of legislation. The purpose of the present study is to present, using a pedagogical approach, the legislation on Transparency, REMIT and Financial Instruments, illustrated by the combined experiences of various actors in the field.

By legislating in these areas, Europe aims to achieve transparency in financial markets through monitoring organised by its own actors. Monitoring, which, when it is actually effective, will complement the monitoring carried out periodically by regulators at the national level.

For the Belgian market, the CREG has been publishing studies<sup>1</sup> on the functioning of the market and the evolution of Belgian wholesale prices for electricity and natural gas for a number of years. The law of 8 January 2012 amending the gas and electricity laws specifically provides the CREG with the power to monitor<sup>2</sup> *"the degree of transparency, including wholesale prices"* and to ensure *"compliance with the obligations of transparency"* by electricity and gas companies.

Pursuing further its role as regulator, and wishing to assess the effective quality of Transparency on the Belgian market, in order to improve its functioning in line with its powers, the CREG will soon organise a public consultation with all market participants in order to glean their opinions and concrete suggestions. A summary of the collected assessments will subsequently be published by the CREG.

Given the rapid evolution of European legislation in these areas, the CREG, with the collaboration of certain supervisory authorities if possible, will regularly update this study in order to offer market participants a reference framework for the Belgian market, in an attempt to enhance its pedagogical character.

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<sup>1</sup>In particular, the CREG ensures that the technical and tariff situation of the electricity and natural gas sectors - as well as their progression - is in the public interest and in line with overall energy policy. In this context, the CREG has published *monitoring* studies on the functioning of Belgian wholesale electricity prices since 2007 (the electricity law in Article 23, §2, paragraph 2, 19°) and wholesale natural gas prices (the gas law in Article 15/14, §2, paragraph 2, 12°).

<sup>2</sup> Article 23, §2, 5° of the electricity law and Article 15/14, §2, 16° of the gas law.

# INTRODUCTION

1. Pursuant to Article 23, §1, 1° and 2° and § 2, second paragraph, 2°, 3°, 4°, 5° and 8°, of the law of 29 April 1999 on the organisation of the electricity market (hereinafter referred to as the electricity law) and of Article 15/14, §1, 1° and 2° and §2, second paragraph, 2°, 3°, 5°, 5°bis and 16° of the law of 12 April 1965 on the transport of gaseous and other products by pipeline (hereinafter referred to as the gas law), the COMMISSION FOR THE REGULATION OF ELECTRICITY AND GAS (hereinafter referred to as the CREG) may, on its own initiative, carry out research and studies on the electricity and natural gas market.

2. This study is carried out within the framework of the general policy note of the CREG for 2016, of 29 October 2015, which was designed to assess whether Belgian transmission system operators (hereinafter referred to as TSO) are correctly applying the European Regulations and Directives, and the general policy note of the CREG for 2017, of 27 October 2016, which was designed to inform the market of the numerous implications and consequences of the European Regulations and Directives, either transposed or not yet transposed, relating to Transparency, REMIT and Financial Instruments. Indeed, the information to be communicated, its reporting, the platforms through which it will be transmitted, and the resulting checks must be communicated as widely as possible while respecting the competences of all market participants.

3. The CREG interviewed various market participants in order to obtain information regarding the flow of information between market participants and/or to check the data provided by certain market participants.

4. Ultimately, the objective pursued by the CREG in this study is to ensure that transparency prevails on the markets, given that this term was used 23 times in its general policy note in 2016 and 46 times in 2017, in order to achieve a competitive internal market for electricity and natural gas that is open to all market participants, including customers.

5. The present study is structured into five chapters:

- the legal framework relating to the regulatory environment of Transparency, REMIT and Financial Instruments;
- a description of the main authorities directly or indirectly regulating the electricity and gas markets;
- the market participants which the CREG met in the context of this study, including data providers and primary data owners;
- a public consultation on Transparency in the wholesale natural gas and electricity markets with market participants, to assess the application of Transparency rules in Belgium;
- the main conclusions of the study.

On 7 September 2017, the CREG invited Fluxys and Elia to confirm in writing that the non-confidential version of this study did not contain any confidential information. Although Fluxys confirmed on 15 September 2017 that the study could be published, Elia provided new information on 15 and 22 September 2017 which was taken into account.

The study of 7 September 2017 was therefore amended and approved by the CREG Executive Committee at its meetings of 5 and 16 October 2017.

# 1. LEGAL FRAMEWORK

## 1.1. SUMMARY

6. As part of the development of the EU's internal market for natural gas and electricity, the European Union wished to create an environment in which market participants could have confidence in its integrity.

The legal framework, in which electricity and natural gas markets<sup>3</sup> function and/or will function, is analysed from three perspectives which form an indivisible whole.

This three-way perspective encompasses three legislations which appear to be distinct, but which the European legislator wants to be integrated:

- Transparency, set out by Regulations 714/2009 and 543/2013 for electricity and 715/2009 for natural gas, but also included in REMIT Regulation 1227/2011 and its Implementing Regulation 1348/2014;
- REMIT is defined by Regulation 1227/2011 associated with Implementing Regulation 1348/2014;
- the regulations relating to Markets in Financial Instruments is mainly composed of Regulation No. 596/2014 (MAR), Directive 2014/57/EU (MAD II), Regulation No. 648/2012 (EMIR) as amended by Regulation No. 600/2014 (MIFIR) and, until 2 January 2018, Directive 2004/39/EC (MiFID), and subsequently, from 3 January 2018, Directive 2014/65 (MiFID II). Moreover, REMIT applies to wholesale energy products.

7. The Regulations and Directives covered in this study are summarised in secondary European law.

At the top of the hierarchy are the EU's "primary" legal standards, namely the Treaties (TEU and TFEU<sup>4</sup>), the amending and complementary treaties, the treaties and acts of accession, fundamental rights and the general principles of law, for which the Court of Justice ensures compliance under Article 19 TEU. Given that the institutions and bodies act within the scope of the powers conferred on them by the treaties, the "secondary" legislation of the EU is subject to these primary standards<sup>5</sup>.

In secondary EU law, it is not the form but the nature of a standard that determines its place in the legal order. The agreements concluded by the EU in its international legal relations enjoy greater legal force than other "secondary" acts of the EU. Among these other secondary acts of the EU, standards of a legislative nature take precedence over implementing provisions. Regulations, Directives and decisions can be used both for legislative acts and acts implementing legislative acts or other implementing acts<sup>6</sup>.

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<sup>3</sup> See Annex 5.3, page 141 for a "Summary description of the gas and electricity markets".

<sup>4</sup> Treaty on European Union and Treaty on the Functioning of the European Union.

<sup>5</sup> LENAERTS, K. and VAN NUFFEL, P., *Europees recht, Intersentia*, Antwerp – Cambridge, 2011, n° 700 and 704.

<sup>6</sup> LENAERTS, K. and VAN NUFFEL, P., *Europees recht, Intersentia*, Antwerp – Cambridge, 2011, n° 701 and 756.

8. The situation that will prevail from 3 January 2018 is illustrated in Figure1.

The European legislator wanted, as Recital 8 of Regulation n°1227/2011 states, to define the borderline between energy products and certain Financial Instruments: "... *Derivative trading, which may be either physically or financially settled, and commodity trading are used together on wholesale energy markets. It is therefore important that the definitions of insider trading and market manipulation, which constitute market abuse, be compatible between derivatives and commodity markets. This Regulation should in principle apply to all transactions concluded but at the same time should take into account the specific characteristics of the wholesale energy markets*".

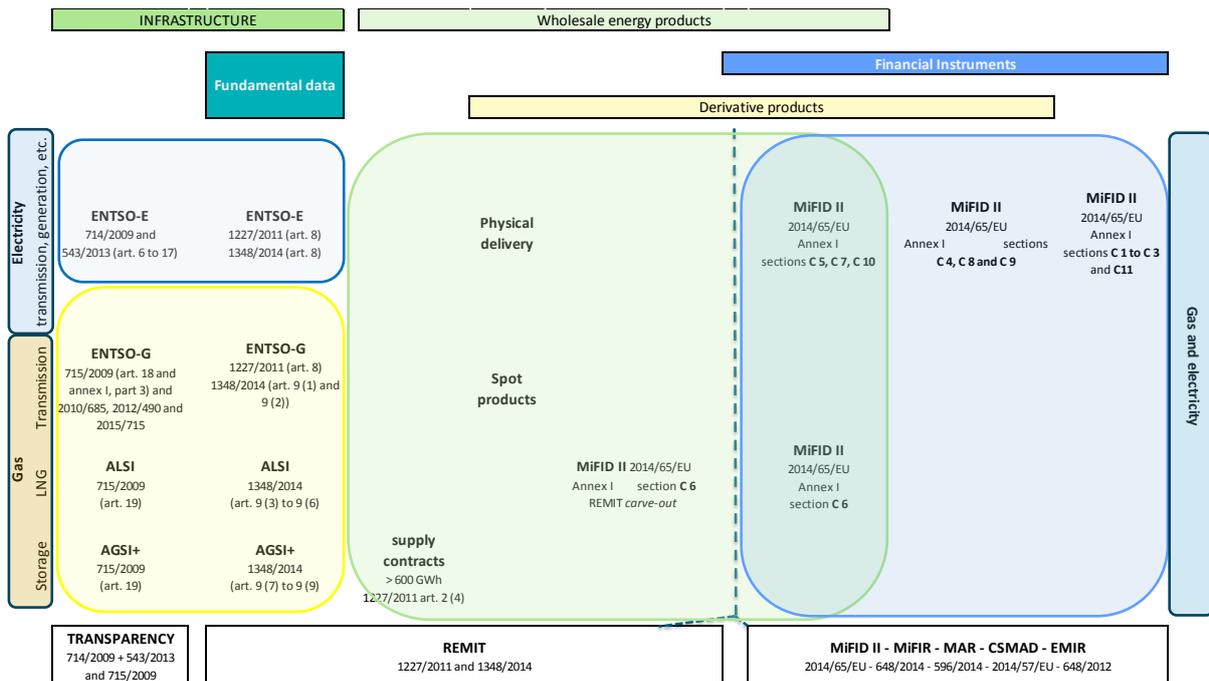


Figure1: three-way and vertical view, as of 3 January 2018 of Transparency, REMIT and Financial Instruments (for more detailed explanations, see paragraphs 97 to 104 as well as footnote 126 on page 52)

Source: CREG

Figure1 shows three legislations that regulate electricity and gas markets in various ways. Each legislation is explained very briefly in the following sections:

- Transparency in section 1.2, page 8;
- REMIT in section 1.3, page 25;
- Financial Instruments in section 1.4, page 43.

9. European and Belgian legislation is linked to each other as shown in Table 1. Each grey area indicates that a legislative text refers to another text. As such, the European Directives (3<sup>rd</sup> package, MiFID I & II) have been transposed into the electricity law and the Transparency Regulation (714/2009) and REMIT Regulation (1227/2011) are referenced therein.

reading direction →	Title	Reference	Electricity law	Gas law	Financial Instruments law
			29-avr-99	12-avr-65	2 August 2002
	3rd package	2009/72/EC			
	3rd package	2009/73/EC			
Transparency	ACER	713/2009			
	ENTSO-E	714/2009			
		543/2013			
	ENTSO-G	715/2009			
	trans-European infrastructure	347/2013			
REMIT	REMIT I	1227/2011			
		1348/2014			
Financial Instruments	ESMA	1095/2010			
	MiFID I (repealed on 3/01/2018)	2004/39/EC			
	MiFID II (in force from 3/01/2018)	2014/65/EU			
	MiFIR	600/2014			
	MAD I (repealed from 3/7/2016)	2003/6/EC			
	CSMAD (+MAR=MADII) - to be transposed	2014/57/EU			
	MAR (+CSMAD=MADII)	596/2014			
	EMIR	648/2012			

Table 1: interconnections between European Regulations and Directives and Belgian laws<sup>7</sup>

Source: CREG

10. At both the European and Belgian level, the above-mentioned legislation will continue to undergo numerous developments in the coming months and years<sup>8</sup>, including better harmonisation between them.

## 1.2. TRANSPARENCY

### 1.2.1. Legal framework

11. The legislation on (improving) the Transparency of the electricity and natural gas markets originates in the Third Legislative Package (and amending acts directly linked to the 3<sup>rd</sup> Package) of the European Union as regards the electricity and gas markets<sup>9</sup>:

- the European Regulations<sup>10</sup>:
  - Regulation (EC) N° 714/2009<sup>11</sup> of the European Parliament and of the Council of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) N° 1228/2003 (hereinafter: 714/2009);

<sup>7</sup> See also paragraphs 11 for Transparency, 53 for REMIT and 83 for Financial Instruments, as well as Figure 8 for the timeline of Regulations and Directives on Financial Instruments.

<sup>8</sup> *Winter Package* or "*Clean Energy for All Europeans*" – is available at: <https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>.

<sup>9</sup> The creation of the internal energy market in 1951 has witnessed considerable progress ever since, including the adoption by the European Parliament and the Council on 13 July 2009 of the Third Package, particularly in the electricity and gas sectors. This comprises five texts, including two Directives, which cover the issue of transparency and data retention, among others.

<sup>10</sup> The European legislation covered in the Official Journal of the European Union can be downloaded at <http://eur-lex.europa.eu/homepage.html?locale=en>.

<sup>11</sup> This regulation will be amended as part of the *Winter Package*.

- Commission Regulation (EU) No 543/2013 of 14 June 2013 on submission and publication of data in electricity markets and amending Annex I to Regulation (EC) No 714/2009 of the European Parliament and of the Council (hereinafter: 543/2013);
  - Regulation (EC) No 715/2009 of the European Parliament and of the Council of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005 (hereinafter: 715/2009);
    - Commission Decision (EU) 2010/685 of 10 November 2010 amending Chapter 3 of Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (hereinafter: 2010/685);
    - Commission Decision (EU) 2012/490 of 24 August 2012 amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (hereinafter: 2012/490);
    - Commission Decision (EU) 2015/715 of 30 April 2015 amending Annex I to Regulation (EC) No 715/2009 of the European Parliament and of the Council on conditions for access to the natural gas transmission networks (hereinafter: 2015/715);
  - Regulation (EU) No 347/2013 of the European Parliament and of the Council of 17 April 2013 on guidelines for trans-European energy infrastructure and repealing Decision No 1364/2006/EC and amending Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009 (hereinafter: 347/2013);
- the European Directives:
- Directive 2009/72/EC<sup>12</sup> of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in electricity and repealing Directive 2003/54/EC (hereinafter: 2009/72/EC);
  - Directive 2009/73/EC of the European Parliament and of the Council of 13 July 2009 concerning common rules for the internal market in natural gas and repealing Directive 2003/55/EC (hereinafter: 2009/73/EC).
- these two Directives have been transposed into Belgian law respectively in the:
- law of 29/04/1999 on the organisation of the electricity market (hereinafter: the electricity law);
  - law of 12/04/1965 on the transport of gaseous and other products by pipeline (hereinafter: the gas law).

but also, in addition to the Third Package, in the:

- Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (hereinafter: REMIT);

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<sup>12</sup> This Directive will be amended as part of the Winter Package.

- Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency (hereinafter 1348/2014).

### 1.2.2. **The purpose and scope of Regulations 714/2009 and 715/2009**

12. Regulations 714/2009 and 715/2009 lay down the legal framework for achieving greater transparency in the European electricity and natural gas markets. They provide market participants with more information so that they can make better informed decisions.

13. Article 1, second paragraph (b) of Regulation 714/2009 refers in particular to:

"facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in electricity. It provides for mechanisms to harmonise the rules for cross-border exchanges in electricity."

14. Article 1, third paragraph (c) of Regulation 715/2009 refers in particular to:

"facilitating the emergence of a well-functioning and transparent wholesale market with a high level of security of supply in gas and providing mechanisms to harmonise the network access rules for cross-border exchanges in gas".

### 1.2.3. **Obligations of market participants to promote Transparency**

15. There are many market participants<sup>13</sup> in the electricity<sup>14</sup> and natural gas<sup>15</sup> markets and their obligations to disclose data in order to comply with Regulations 714/2009 and 715/2009, including the electricity and gas laws, depend on their activities and size.

16. For electricity and natural gas, five main categories can be identified:

- 1) producers (electricity only) and imports;
- 2) transporter and storage (gas only)
- 3) distributors;
- 4) suppliers;
- 5) consumers and exports.

Several participants combine multiple activities, and the activities as stated do not necessarily follow the order in which they are listed. For example, the electricity produced can be fed into the single transmission system, directly into distribution networks or directly consumed. While imported natural gas (in a gaseous state and/or LNG) can be either injected into the single transmission system or stored.

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<sup>13</sup> Article 2, 7 of 1227/2011: "any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets".

<sup>14</sup> <http://www.elia.be/fr/a-propos-elia/electricity-market-players>.

<sup>15</sup> <http://www.fluxys.com/belgium/fr-BE/About%20natural%20gas/Transmission/Transmission> and <http://www.fluxys.com/belgium/fr-BE/About%20Fluxys/AboutFluxys>.

Customers can be connected either to the transmission system or to the distribution network.

In addition to these participants, there are also energy exchanges for electricity and natural gas, which are platforms<sup>16</sup> for the purchase and sale of energy destined for market participants.

17. The TSOs refer to the requirements of Regulations 714/2009, 543/2013 and 715/2009 to publish their infrastructure data<sup>17</sup> on transparency platforms at both the national and European level.

As regards electrical data, a distinction must be made between the TSOs and data providers who process the data received in order to communicate it to ENTSO-E and the primary data owners who submit their data to the TSOs and/or data providers<sup>18</sup> (Article 4 of 543/2013).

The primary data owners include: the TSOs, DSOs, generators, generation units, consumption units, operators of direct-current links, transmission capacity allocation managers, exchanges and adjustment market operators.

As regards gas data, there are three data providers: the TSO and LNG and storage facility operators (Articles 18 and 19 of 715/2009).

Although there are no harmonised publication thresholds for natural gas in 715/2009, for electricity, minimum thresholds have been set at which data must be reported. For example, in 543/2013<sup>19</sup>, consumption units (Article 7), generation and production units (Article 15), transmission infrastructure (Articles 9 and 10) and offshore network infrastructure (Article 10) with at least 100 MW unavailability/variation must be formally communicated to ENTSO-E. Information on generation units (Article 14) of at least 100 MW must also be provided. The actual generation must be transmitted for generators with an installed generating capacity of at least 100 MW, and for solar and wind generation, various limits are also proposed (Article 16).

These thresholds have been set in a European framework for all countries regardless of their size. However, for REMIT, there is no threshold, except for Article 2 (5), second paragraph of Regulation 1227/2011, on the grounds that the declaration of fundamental data and publication of UMMs are mandatory as soon as the price is impacted, in particular, by an unavailability of a unit or a variation in power (see also paragraph 75).

The transparency platforms of the participants in the Belgian electricity market (such as Elia for example) adhere to the European thresholds set out in Regulations 714/2009 and 543/2013.

18. Matters relating to the liability of data owners and market participants, as well as sanctions, are covered in Chapter 2, concerning regulatory authorities.

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<sup>16</sup> Article 2, 4 of Regulation 1348/2014: "*organised marketplace*" or "*organised market*" (**OMP**),  
(a) a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract,  
(b) any other system or facility in which multiple third-party buying and selling interests in wholesale energy products are able to interact in a way that results in a contract.

*This includes electricity and gas exchanges, brokers and other 'persons professionally arranging transactions', and trading platforms within the meaning of Article 4 of Directive 2014/65/EU (see paragraph 88) of the European Parliament and of the Council, such as RMs, MTFs and OTFs.*

<sup>17</sup> Fundamental data for REMIT.

<sup>18</sup> This is defined by Article 2 (14) of 543/2013 as the entity that sends data to the central platform for transparency of information (see also Figure 2).

<sup>19</sup> Article 5.5 (i) of Annex I to 714/2009 also provides that "[TSOs shall publish at least] ex-ante information on planned outages and ex-post information for the previous day on planned and unplanned outages of generation units larger than 100 MW".

#### 1.2.4. Transparency platforms

19. Transparency platforms are mainly organised around transmission system operators. Belgian TSOs work in particular with third parties for data that they do not own, and they centralise this data before sending it to the transparency platforms.

The TSOs transfer the collected data to the transparency platforms:

##### at the Belgian level

20. The two transmission system operators must apply the legislation on transparency:

- for Elia, the electricity law and European Regulations 714/2009 and 543/2013;
- for Fluxys, the gas law and European Regulation 715/2009.

21. Annexes VI.4 and VI.5 contain the organisational charts of the Elia and Fluxys groups. Only regulated activities as required by current legislation are covered by the present study.

As regards Elia, the CREG regulates Elia System nv and Elia Asset nv, while as regards Fluxys, the CREG regulates Fluxys Belgium nv and Fluxys LNG nv, as well as Interconnector (IUK) Ltd.

22. Both Belgian TSOs each have a transparency platform.

##### 1.2.4.1. Elia

23. For the needs of the Belgian market, Elia publishes data<sup>20</sup> relating to the national market on its website. For certain areas of publication, the user is redirected to the European platform or to Elia's partner websites.

The data available on the Elia website are subdivided into different menus

- real-time consumption data and consumption forecasts for the Elia zone;
- data relating to Elia interconnections with foreign countries (interconnection capacities, nominations, physical flows, maintenance planning for elements of the network);
- power generation data in the Elia zone (generating facilities, available generation capacity forecast, nominations, unplanned outages, generated capacity, forecast changes in generation capacity)
- data relating to the balancing of the Elia zone (current system imbalance of the Elia zone, available regulation capacity, using regulation capacity, imbalance prices);
- investment plan in the Elia network.

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<sup>20</sup> <http://www.elia.be/fr/grid-data/transparence>.

#### 1.2.4.2. FLUXYS

24. Fluxys also publishes operational data<sup>21</sup> on the gas transmission system, Loenhout storage facility and LNG terminal in Zeebrugge on its website:

- Gas transport
  - Capacities and contracts: overview of the aggregated capacities at the interconnection points and domestic exit points and the traded capacities at the secondary market;
  - Maintenance: overview of the planned works and interventions on the transmission network;
  - Balancing and Allocations: the hourly Market Balancing Position and the history of allocations as from gas year 2005 till 2011;
  - Flow Data: the hourly updated nominations, allocations, physical flow for interconnection points and domestic exit points [on the Belgian market];
  - Nominations: history of the nominations as from gas year 2005 till 2011
  
- Loenhout Storage
  - Capacities and contracts: overview of aggregate capacities at the storage facility;
  - Maintenance: overview of the planned works and interventions at the storage facility;
  - Flow data: operational data of the storage facility.
  
- LNG terminal in Zeebrugge
  - Capacities and contracts: Overview of aggregate capacities at the LNG terminal;
  - Maintenance: Overview of the planned works and interventions at the LNG terminal;
  - Flow data: operational data of the LNG terminal;
  - Ship approval: the procedure and forms for ship approval at the terminal.

A manual (*Electronic Data Platform User Manual* - Fluxys) for the use of data is provided to market participants on the Fluxys website at <https://gasdata.fluxys.com/media/1057/user-manual.pdf>.

In addition to the possibility of downloading the data history, both TSOs also have personalised data services on their platform, which provides certain market participants access to their own data in particular.

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<sup>21</sup> <http://www.fluxys.com/belgium/fr-BE/TargetGroups/Operational%20data.aspx> and <http://www.fluxys.com/belgium/fr-BE/Services/Transmission/EDP/EDP>.

## At the European level

25. Articles 4 of Regulations 714/2009 and 715/2009 stipulate that all transmission system operators shall cooperate at Community level through the ENTSO<sup>22</sup> for electricity and gas to promote the completion and functioning of the internal market in electricity [and natural gas] and cross-border trade and to ensure the optimal management, coordinated operation and sound technical evolution of the European electricity [and natural gas] transmission network. In other words, not only does the successful completion of European transparency objectives aim for the optimal functioning of markets, but also the introduction of monitoring of the market by its own operators, and this will supplement the CREG's periodic monitoring of the market's functioning and the changes in Belgian wholesale natural gas and electricity prices.

26. Two ENTSOs were created by the transmission system operators:

- ENTSO-E (European Network of Transmission System Operators for Electricity);
- ENTSO-G (European Network of Transmission System Operators for Gas).

### 1.2.4.3. ENTSO-E

27. ENTSO-E is an association representing 42 electricity transmission system operators (TSOs) from 35 countries across Europe, therefore transcending the borders of the European Union (EU).

28. Regulation 714/2009 establishes ENTSO-E in Article 5 and lays down its tasks in Article 8.

Its tasks include<sup>23</sup> in particular:

- develop network codes<sup>24</sup> in 12 areas in accordance with the *framework guidelines* of ACER<sup>25</sup>, unless the European Commission uses the so-called "direct comitology" procedure. Each network code is legally binding as soon as it is approved in comitology by the European bodies.<sup>26</sup>
  - To date, 5 network codes are in force and 3 have been validated by Member States, but they are awaiting validation by the European Parliament and the Council. Table 2 below lists the network codes already in force and those that still need to be approved.

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<sup>22</sup> European Network of Transmission System Operators

<sup>23</sup> See also <https://www.entsoe.eu/about-ENTSOE/inside-ENTSOE/mission-and-vision/Pages/default.aspx>.

<sup>24</sup> [http://www.acer.europa.eu/en/Electricity/FG\\_and\\_network\\_codes/Pages/default.aspx](http://www.acer.europa.eu/en/Electricity/FG_and_network_codes/Pages/default.aspx)

and

<https://www.entsoe.eu/major-projects/network-code-development/electricity-balancing/Pages/default.aspx>.

<sup>25</sup> [http://www.acer.europa.eu/en/Electricity/FG\\_and\\_network\\_codes/Pages/default.aspx](http://www.acer.europa.eu/en/Electricity/FG_and_network_codes/Pages/default.aspx).

<sup>26</sup> Developed by ACER and the ENTSOs, a *network code* is a set of harmonised rules applying to a given area (Articles 8 (6) of 714/2009 and 715/2009) in the energy sector which becomes legally binding after passing through the comitology procedure, and therefore acquires the same status as any other European Regulation (Articles 6, 7 and 8 of Regulations 714/2009 and 715/2009). Network codes are intended to simplify and facilitate access to European markets by putting in place mechanisms to strengthen market integration.

mandatory	adoption	status	regulation	network codes	
					<b>Grid connection</b>
14/04/2016	17/05/2016	in force	2016/631	RfG	requirements for grid connection of generators
17/08/2016	7/09/2016	in force	2016/1388	DCC	network code on demand connection
26/08/2016	28/09/2016	in effect	2016/1477	HVDC	connection to high-voltage networks
					<b>Capacity allocation and congestion management</b>
24/07/2015	15/08/2015	in force	2015/1222	CACM	Capacity allocation and congestion management
26/09/2016	17/10/2016	in force	2016/1719	FCA	Forward capacity allocation
		validation in progress			<b>System Operation</b>
					operational safety
					operational planning and programming
					control of the frequency of loads and reserves
		validation in progress			<b>Emergency and restoration</b>
		validation in progress		EB	<b>Electricity balancing</b>

Table 2: Establishment of network codes for electricity: status as of 31 December 2016

Source: CREG

- The energy efficiency referred to in Article 8 (6), l, has not been addressed in the form of a network code, but was the subject of Directive 2012/27/EU<sup>27</sup>, which will be adapted as part of the Winter Package<sup>28</sup>.
  - Rules on third-party access (Article 8 (6), c) have never been taken into account in network codes.
  - Article 8 (6), i) of 714/2009 provides that transparency rules are one of the 12 areas that need to be covered by a network code(s). "For the time being, the Commission does not envisage the development of network codes specifically dedicated to transparency rules. In addition to the chapters on transparency in the annex to Regulations 714 and 715, rules to promote transparency are also found in the network codes which have been adopted to date. It would therefore appear that the need for a more specific legislative vehicle has not yet been identified."<sup>29</sup> However, Regulation 543/2013 has adopted all or part of this objective as regards the electricity component.
  - Article 8 (6), k, on the rules on harmonised transmission tariff structures is unlikely to be the subject of a network code in the coming years, given ACER's viewpoint, which states<sup>30</sup> "*In conclusion, the Agency considers a formal Framework Guidelines process to be a disproportionate response at this stage*".
- adopt every two years a 10-year plan for the development of the network throughout the Community, including European perspectives on adequacy of supply, and give an opinion on national 10-year development plans to assess their compatibility with the network development plan throughout the Community;
  - coordinate the electrical interconnections of transmission systems;

<sup>27</sup> Directive 2012/27/EU of the European Parliament and of the Council of 25 October 2012 on energy efficiency, amending Directives 2009/125/EC and 2010/30/EU and repealing Directives 2004/8/EC and 2006/32/EC.

<sup>28</sup> or the *Clean Energy for All Europeans* proposals is available at the following address:

<sup>29</sup> ACER e-mail of 22 December 2016 (translation).

<sup>30</sup> *Scoping towards potential harmonisation of electricity transport tariff structures - Conclusions and next steps December 2015*.

[http://www.acer.europa.eu/en/Electricity/FG\\_and\\_network\\_codes/Documents/Documents/Scoping%20conclusions%20for%20for%20harmonised%20Transmission%20Tariff%20Structures%20in%20in%20Electricity.pdf](http://www.acer.europa.eu/en/Electricity/FG_and_network_codes/Documents/Documents/Scoping%20conclusions%20for%20for%20harmonised%20Transmission%20Tariff%20Structures%20in%20in%20Electricity.pdf).

- provide common management tools to ensure transparency and coordination of network operations under normal and emergency conditions;
- ensure and facilitate the integration of new sources of generation.

29. ENTSO-E also houses a central platform for the transparency of information established by Article 3 of Regulation 543/2013<sup>31</sup>. This platform has been operational since 5 January 2015. Accessible free of charge via the Internet, it must eventually make data available to market participants for a period of at least 5 years, but only from 5 January 2015 onwards.

30. Regulation 543/2013 sets out in Articles 6 to 17 the data - and how they are to be published - that TSOs must provide to this transparency platform, namely:

<u>Articles</u>	<u>Information</u>
6	total load
7	unavailability of consumption units
8	projected annual margin
9	transmission infrastructure
10	unavailability of transmission infrastructure
11	estimation and supply of exchange capacities between zones
12	use of exchange capacities between zones
13	congestion management measures
14	generation forecasting
15	unavailability of generators and generation units
16	actual generation
17	adjustment

31. In general, the primary data owners - including electricity generators - must submit their data to the TSOs and/or data providers, who then communicate the data to ENTSO-E.

32. The transparency platform can be consulted at <https://transparency.entsoe.eu/>.<sup>32</sup> The data are presented under six different headings:

- *Load* includes in particular *Total Load – Day Ahead / Actual, Forecast Week Ahead, Forecast Month Ahead, Forecast Year Ahead, Forecast Margin – Year Ahead*;
- *Generation* which includes inter alia *Installed Capacity per Production Type, Water Reservoirs and Hydro Storage Plant, Actual Generation per Production Type, Actual Generation per Generation Unit, Generation Forecast – Day Ahead, Generation Forecasts – Day Ahead for Wind and Solar et Installed Capacity per Production Unit*;
- *Transmission* includes various data, such as *Scheduled Commercial Exchanges, Cross-Border Physical Flows, Day-ahead Prices, Forecasted Transfer Capacities (Day, Week, Month and Year Ahead), Explicit / Implicit Allocations (Intraday, Day Ahead), Transfer*

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<sup>31</sup> At the Belgian level, the legislator preferred to use one or more market transparency platforms in the electricity law, in Article 8, §1, 2nd paragraph, 2° and 15°. Although the term transparency is mentioned 14 times in the law, it is not defined, and no specific rules are directly associated with it. However, the electricity law, in particular Articles 8, 9ter, 9quater and 18bis, includes some of the information obligations incumbent on Elia.

<sup>32</sup> A sitemap of the WEBSITE of the transparency platform can be found at [https://transparency.entsoe.eu/content/static\\_content/Static%20content/sitemap/Sitemap-pub.html](https://transparency.entsoe.eu/content/static_content/Static%20content/sitemap/Sitemap-pub.html).

*Capacities Allocated, ... Critical Network Elements, Flow Based Allocations (Day Ahead, Congestion Income);*

- *Balancing* which includes *Rules on Balancing, Accepted Offers and Activated Balancing Reserves, Volumes of Contracted Balancing Reserves, Price of Reserved Balancing Reserves, Imbalance, Cross-Border Balancing and Financial Expenses and Income;*
- *Outages* which covers *Unavailability - in Transmission Grid, of Offshore Grid, of Production and Generation Units - and Aggregated Unavailability of Consumption Units ;*
- *Congestion Management* covering *Countertrading, Redispatching and Costs.*

These data, expressed in units of time, are published per country/Area within a fixed time frame, starting on 5 January 2015; they can be downloaded<sup>33</sup>.

ENTSO-E is much more than a transparency platform, as indicated above. Since the creation of this site in 2009, a lot of information can also be found at <https://www.entsoe.eu/about-ENTSOE/Pages/default.aspx>.

33. The regulation and checks of this transparency platform, both at the European and Belgian levels, are discussed respectively in Chapter 2, Authorities and Chapter3, Market participants met by the CREG in the context of this study.

#### 1.2.4.4. ENTSO-G

34. Established at the end of 2009, ENTSO-G is an association representing 45 gas transmission system operators (TSOs) from 26 European countries.

35. Regulation 715/2009 establishes ENTSO-G in Article 5 and lays down its tasks in Article 8, which consist primarily of:

- developing network codes in 12 areas in accordance with the framework guidelines of ACER<sup>34</sup>, unless the European Commission uses the "direct comitology" procedure. Each network code is legally binding as soon as it is approved in comitology by the European bodies;
  - To date, 5 network codes<sup>35</sup> are in force and a sixth has been validated by Member States. Table3 below lists the network codes already in force and those that still need to be approved.

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<sup>33</sup> ENTSO-E offers various options for data extraction: *via GUI, restful API, web services queries; Data repository short term solution; Data repository FTP solution and subscriptions.*

See also: <https://www.entsoe.eu/data/ENTSOE-transparency-platform/User-Group/Pages/default.aspx>, and [https://transparency.entsoe.eu/content/static\\_content/Static%20content/knowledge%20base/knowledge%20base.html](https://transparency.entsoe.eu/content/static_content/Static%20content/knowledge%20base/knowledge%20base.html).

<sup>34</sup> [http://www.acer.europa.eu/en/Gas/Framework%20guidelines\\_and\\_network%20codes/Pages/default.aspx](http://www.acer.europa.eu/en/Gas/Framework%20guidelines_and_network%20codes/Pages/default.aspx).

<sup>35</sup> including the CMP by direct comitology on the basis of a decision of the European Commission.

mandatory	adoption	status	regulation	network codes	
24/08/2012	17/09/2012	direct comitology	2012/490/EU	CMP	congestion management
26/03/2014	1/10/2015	in force	312/2014	BAL	balancing of transmission networks
16/03/2017	6/04/2017	in force	2017/459	CAM	capacity allocation mechanism
	1/04/2017	validated by Member States (13/10/2016)		CAMINCRE	capacity allocation mechanism: Incremental Capacities
30/04/2015	1/05/2016	in force	2015/703	INTEROP	Interoperability and data exchange
16/03/2017	6/04/2017	in force	2017/460	TAR	Harmonisation of tariff structures for transmission networks

Table 3: Establishment of network codes for natural gas: status as of 31 December 2016

Source: CREG

- Article 8 (6) i) of 715/2009 provides that transparency rules are one of the 12 areas that need to be covered by a network code(s). "For the time being, the Commission does not envisage the development of network codes specifically dedicated to transparency rules. In addition to the chapters on transparency in the annex to Regulations 714 and 715, rules to promote transparency are also found in the network codes which have been adopted to date. It would therefore appear that the need for a more specific legislative vehicle has not yet been identified."<sup>36</sup> However, it has to be said that the rules of transparency are not yet exhaustive and sufficiently explicit throughout European and Belgian legislation, and that they ought to be the subject of a network code.
- The network code 984/2013 on the capacity allocation mechanism (Article 8 (6) g), of 715/2009) has been repealed by Regulation 2017/459 which "*proposes a broader scope than that of Regulation (EU) No 984/2013 mainly in terms of rules on the supply of additional capacity, and clarifies certain provisions associated with the definition and supply of firm and interruptible capacity and the upgrading of the network code*".
- ENTSOG has established the *Common Network Operation Tools* (CNOTs) for the exchange of each identified data of existing network codes. These *guidelines*<sup>37</sup> describe, in particular through detailed diagrams, the European standards for the format of operational and market-related data exchanges between TSOs, capacity reservation platforms and the users of transmission system.
- adopt a 10-year plan for the development of the network throughout the Community, including European perspectives on adequacy of supply, and examine the national 10-year development plans, to ensure their compatibility with the network development plan throughout the Community;
- annual summer and winter prospects as regards supply;

<sup>36</sup> ACER e-mail of 22 December 2016 (translation).

<sup>37</sup> [http://www.entsog.eu/publications/common-data-exchange-solution-table?utm\\_medium=email&utm\\_campaign=PRESS%20RELEASE%20%20ENTSOG%20has%20finalised%20CNOTs%20for%20each%20identified%20data%20exchange%20in%20the%20network%20codes&utm\\_content=PRESS%20RELEASE%20%20ENTSOG%20has%20finalised%20CNOTs%20for%20each%20identified%20data%20exchange%20in%20the%20network%20codes+CID\\_41f30240d661fb082bd80bfc02728147&utm\\_source=CampaignMonitor&utm\\_term=here#COMMON-DATA-EXCHANGE-SOLUTION-TABLE](http://www.entsog.eu/publications/common-data-exchange-solution-table?utm_medium=email&utm_campaign=PRESS%20RELEASE%20%20ENTSOG%20has%20finalised%20CNOTs%20for%20each%20identified%20data%20exchange%20in%20the%20network%20codes&utm_content=PRESS%20RELEASE%20%20ENTSOG%20has%20finalised%20CNOTs%20for%20each%20identified%20data%20exchange%20in%20the%20network%20codes+CID_41f30240d661fb082bd80bfc02728147&utm_source=CampaignMonitor&utm_term=here#COMMON-DATA-EXCHANGE-SOLUTION-TABLE).

- common management tools to ensure transparency and coordination of network operations under normal and emergency conditions, including a common Incident Classification Scale and common research plans.

36. Article 18 and Part 3 of Annex I to Regulation 715/2009 sets out the transparency requirements for TSOs.<sup>38</sup> Article 19 of the same Regulation sets out the transparency requirements for storage and LNG facilities.

Consequently, TSOs publish data on the ENTSO-G transparency platform<sup>39</sup> - operational since 1 October 2013 and updated on 1 October 2014 - while storage facilities and LNG facilities publish data on a voluntary basis on the European platforms AGSI+ and ALSI respectively.

37. As regards ENTSO-G, Regulation 715/2009<sup>40</sup> sets out in Article 18 and Part 3 of Annex I the data - and how they are to be published - that TSOs must communicate to this transparency platform, namely:

<u>Articles</u>	<u>Information</u>
18 (1).	services offered and conditions + technical information to obtain effective access to the network
18 (2).	training, methodology and tariff structure
18 (3).	technical, contractual and available capacities for all relevant points
18 (6).	ex ante and ex post supply and demand, on the basis of nominations, forecasts and inflows and outflows network balancing: measures taken, expenditure and revenue
Annex I, 3.1.	definition of the technical information necessary for users to obtain effective access to the network
Annex I, 3.1.1.	formal disclosure requirements
Annex I, 3.1.2.	formal content requirements as regards disclosure
Annex I, 3.2.	definition of all relevant points for transparency requirements
Annex I, 3.3.	information to be published at all relevant points and frequency of publication by the TSOs
Annex I, 3.4.	information to be published on the transmission system and frequency of publication

38. The second version of the transparency platform can be consulted at <https://transparency.entsoe.eu/>.<sup>41</sup> The data are presented<sup>42</sup> - with several analysis tools - under three different headings:

- *Point Data* with in particular:
  - *Transport Data: Nomination, Renominations, Allocations, Physical Flows, GCV, Wobbe Index, Capacities, Interruptions ;*
  - *Tariffs;*
  - *CMP Unsuccessful Request;*
  - *CMP Unavailability Firm Capacity;*
  - *CMP Auction Premiums;*
  - *Interruptions.*
- *Zone Data* showing in particular *Transport Data*, which includes *Latest Nominations, Allocations and Physical Flows*.

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<sup>38</sup> At the Belgian level, the legislator preferred to use one or more market transparency platforms in the gas law, in Article 15/1, §1, 2°. However, there is no specific definition or rules for transparency (cited 11 times) oriented towards the market. The gas law does, however, include certain obligations as regards information (in particular Articles 8, 8/5bis, 15/1, 6° and 7° and 15/2bis) incumbent on Fluxys. The Code of Conduct also includes certain additional rules on transparency.

<sup>39</sup> Carried out via <https://transparency.entsog.eu>.

<sup>40</sup> Amended by Commission decisions 2010/685, 2012/490 and 2015/715.

<sup>41</sup> A user's manual for the ENTSO-G transparency platform can be found at [https://transparency.entsog.eu/pdf/ENTSOG%20-%20PDWS%20-%20TP%20User%20Manual\\_Final\\_v\\_3\\_0.pdf](https://transparency.entsog.eu/pdf/ENTSOG%20-%20PDWS%20-%20TP%20User%20Manual_Final_v_3_0.pdf).

<sup>42</sup> More detailed information can be found under the tab "Help, Data Publication Format", or at [https://transparency.entsog.eu/pdf/TRA158\\_ENTSOG%20TP%20Data%20Publication%20Format\\_v3%2017052016.pdf](https://transparency.entsog.eu/pdf/TRA158_ENTSOG%20TP%20Data%20Publication%20Format_v3%2017052016.pdf).

- *Referentials* showing the data per:
  - *Interconnection Points;*
  - *Operators;*
  - *Balancing Zones;*
  - *Operator Point Directions;*
  - *Interconnections;*
  - *Aggregate Interconnections.*

These data, expressed in units of time, have been published per country/category in accordance with set deadlines since 1 October 2014; they can be downloaded via an Application Program Interface (API). A procedure manual is available at [https://transparency.entsog.eu/pdf/TP\\_REG715\\_Documentation\\_TP\\_API%20-%20v1.pdf](https://transparency.entsog.eu/pdf/TP_REG715_Documentation_TP_API%20-%20v1.pdf).

ENTSO-G is much more than a transparency platform, as indicated above. Since the creation of this site in 2009, a lot of information can also be found at <https://www.entsog.eu/> (Menu tab).

39. The regulation and supervision of this transparency platform, both at the European and Belgian levels, are discussed respectively in Chapter 2, "Authorities" and Chapter 3, "Market participants met by the CREG".

#### 1.2.5. **Data flows between market participants**

40. Summarised graphically, the Transparency platforms for the electricity and gas markets are illustrated in Figure 2.

This simplified diagram shows the framework within which Belgian data flows - detailed in paragraphs 32 and 38 - flow from the primary data owners to the two European transparency platforms (hereinafter: TP) housed at ENTSO-E<sup>43</sup> and ENTSO-G<sup>44</sup>.

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<sup>43</sup> <https://www.entsoe.eu/data/ENTSOE-transparency-platform/Pages/default.aspx>.

<sup>44</sup> <https://transparency.entsog.eu/>.

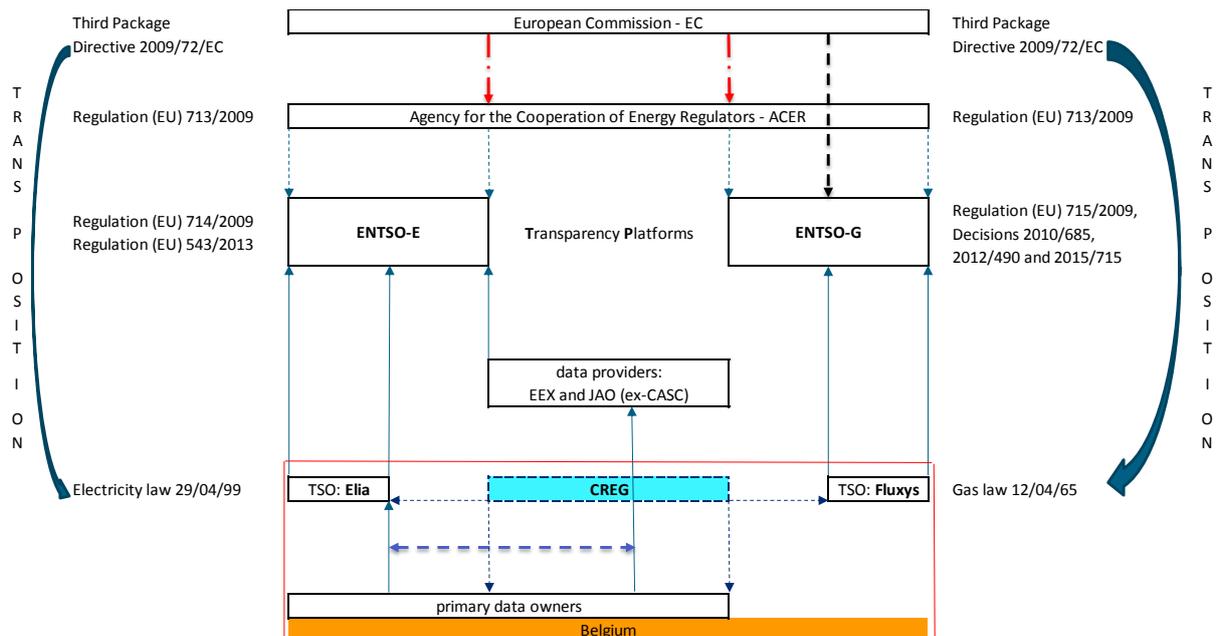


Figure 2: Transparency as regards transmission  
Source: CREG

41. As regards the electrical component, the primary data owners must, in accordance with Regulations 714/2009 and 543/2013, submit their data to the TSOs and/or data providers<sup>45</sup> processing and communicating them to the ENTSO-E transparency platform, so that the latter can publish, per country, the information required by the European Regulations. For Belgium, all primary data owners must communicate their data to the TSO, except for

- three of them that communicate data to the EEX platform (see organisational chart in Annex 5.6);
- all auctions of interconnection capacity rights passing through JAO<sup>45</sup>. However, these data remain under the responsibility and therefore under the control of the TSO (Figure 2: blue two-way arrow in broken lines).

ENTSO-E provides TSOs with a Data Item Monitoring tool enabling them to check whether or not they are fully compliant.

42. As regards the gas component, only the TSO provides the transmission data to the ENTSO-G platform, in accordance with Article 18 and Part 3 of Annex I to Regulation 715/2009.

The European natural gas transmission capacity reservation platform (PRISMA) enables TSOs and shippers to auction off the transmission gas capacity at the primary and secondary market level (CAM network code). On the primary market, transactions are reported by TSOs or an RRM. However, on the secondary market, transactions are reported directly by market participants to ACER.

43. In terms of monitoring market participants, Figure 2 shows that at the European level, ENTSOs are monitored by ACER (see paragraphs 111 and 112), but the Commission has directly monitored ENTSO-G (see paragraph 109). According to Article 34 (1), the Commission carries out an evaluation of ACER's activities (red dotted line between the Commission and ACER).

<sup>45</sup> EEX: European Energy Exchange. JAO: Joint Allocation Office is the organisation which coordinates transmission rights auctions across the 27 European borders on behalf of 20 transmission system operators. JAO S.A does not report on behalf of market participants, but only on behalf of TSOs. According to Article 15 of Regulation 1227/2011, JAO is a PPAT.

At the national level, the CREG monitors TSOs, data providers and primary data owners within the European regulatory framework and the electricity and gas laws.

Chapter 2 on the authorities involved elaborates further on the above-mentioned aspects.

44. However, the data relating to LNG and storage, as required by Article 19 of Regulation 715/2009, are transferred on a voluntary basis<sup>46</sup> to the ALSI and AGSI+ transparency platforms of GIE<sup>47</sup> (*Gas Infrastructure Europe*) respectively. Given the specificity of these two transparency platforms, a separate figure has been drawn to illustrate the data flows.

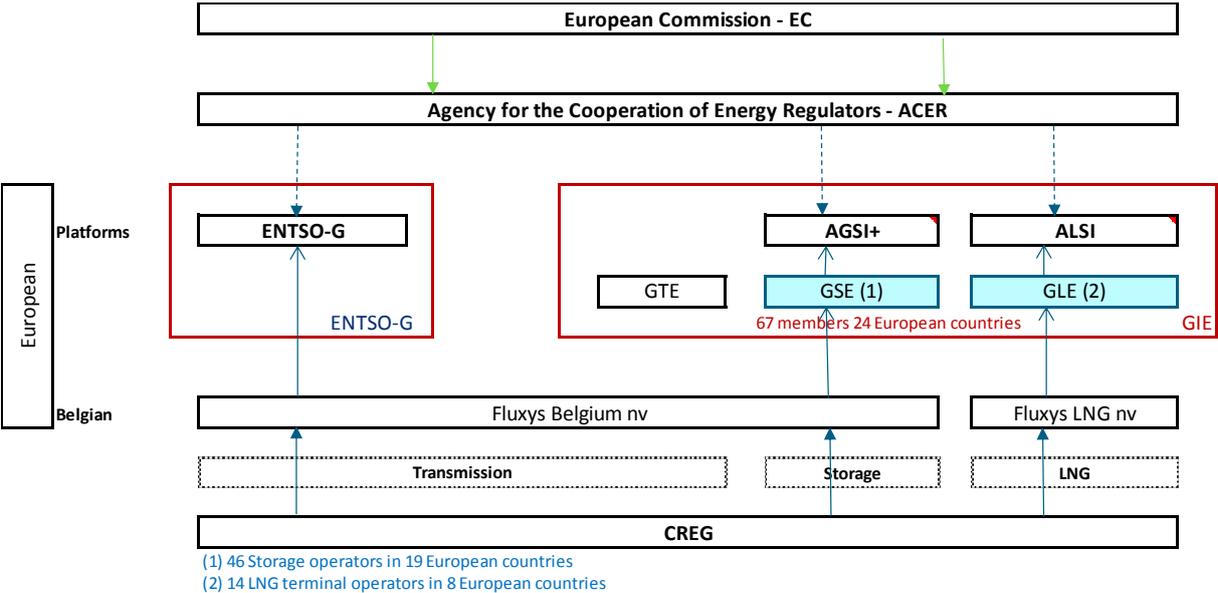


Figure3: Transparency for storage and liquefied natural gas (LNG)  
 Source: CREG

45. Gas Infrastructure Europe (GIE<sup>48</sup>) is an independent, not-for-profit association composed of 67 members<sup>49</sup> from 24 countries, representing the interests of the gas industry in transport infrastructure (TSO), LNG Terminals (LSO) and Natural Gas Storage Systems (SSO), to the European institutions.

46. GIE is the umbrella structure of three entities:
- GTE: Gas Transmission Europe represents the TSOs;
  - GLE: Gas LNG Europe represents the operators of LNG facilities;
  - GSE: Gas Storage Europe represents the operators of storage facilities.

Together with ACER, GIE has developed data publication schedules which must be used by the operators of storage facilities and operators of LNG facilities, who are required to apply Article 19 of 715/2009.

<sup>46</sup> As such, these two platforms were not created by a Regulation, as was the case for ENTSO-G for example, which was created by Article 5 of Regulation 715/2009 with the laying down of its tasks in Article 8 of the same Regulation for all TSOs (Article 4).

<sup>47</sup> This association comprises three entities: GLE (Gas LNG Europe), GSE (Gas Storage Europe) and GTE (Gas Transmission Europe).

<sup>48</sup> <http://www.gie.eu/>.

<sup>49</sup> Certain members report directly to ACER without going through the transparency platforms set up by GIE.

This implementation must also be seen in the context of Article 8 of 1227/2011, on the collection of data under REMIT, and Article 9 of 1348/2014, relating to the rules applicable to the declaration of fundamental data on gas.

47. Since 15 February 2016, GIE has been registered as a Registered Reporting Mechanism (RRM). On 9 August 2016, GIE launched two transparency platforms: AGSI+ (Aggregated Gas Storage Inventory) for storage and ALSI (Aggregated LNG Storage Inventory) for LNG, which include the fundamental REMIT data (Article 9 of 1348/2014) for gas storage and LNG infrastructures from GIE members as well as non-member companies.

The reporting obligations for these data - to ACER or at the request of NRAs - have been in force since 7 April 2016.

AGSi+ <sup>50</sup> provides online daily data representing approximately 1,043 TWh, or about 88% of the European Union's storage capacity. For 46 operators of storage facilities in 19 Member States, this platform includes the following data:

- Volume in storage (TWh): status at the end of the gas day;
- Full ratio (%): gas inventory/working volume;
- Change (%);
- Injection (GWh/day): during the gas day;
- Withdrawal (GWh/day): during the gas day;
- Working volume (TWh);
- Injection capacity (GWh/day);
- Withdrawal capacity (GWh/day);
- history;
- graph.

Article 9 (7) of 1348/2014 states that *Storage system operators [...] shall report [...] for each storage facility or, where facilities operated in groups, for each group of storage facilities following information through a joint platform:*

- a) the technical, contracted and available capacity of the storage facility;
- b) amount of gas in stock at the end of the gas day, inflows (injections) and outflows (withdrawals) for each gas day;
- c) notices of planned and unplanned unavailability of the storage facility, including the time of publication of such notices and the capacities concerned.

ALSI makes available daily data representing about 1,720 TWh or 176 bcm, or about 89% of the European Union's regasification capacity. For 14 operators of LNG facilities in 8 Member States, this platform shows the following data inter alia:

- LNG inventory ( $10^3 \text{ m}^3 \text{ LNG}$ ): aggregated amount of LNG in tanks, status at the end of the gas day;
- Send-out (GWh/day) aggregated gas flow out of the LNG facility, send-out during gas day;
- DTMI: Declared Total Maximum Inventory ( $10^3 \text{ m}^3 \text{ GNL}$ );

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<sup>50</sup> Since October 2016, the AGSI+ and ALSI platforms are no longer available since GIE has carried out an evaluation of data quality. In addition, additional functionalities will be made available to market participants. It has not been indicated whether these platforms will be accessible again.

- DTRS: Declared Total Reference Send-out (GWh/day);
- history;
- graph.

Article 9 (3) of 1348/2014 specifies that *LNG system operators [...] shall report to the Agency and, at their request, to national regulatory authorities for each LNG facility the following information:*

- a) the technical, contracted and available capacity of the LNG facility in a daily resolution;
- b) send-out and inventory of the LNG facility in a daily resolution;
- c) planned and unplanned unavailability announcements of the LNG facility including the time of the announcement and the capacities concerned.

Article 9 (5) of 1348/2014 specifies that *Market participants or LNG System Operators on their behalf shall report to the Agency and, at their request, to national regulatory authorities for each LNG facility the following information:*

- a) in relation to unloading and reloading of cargos:
  - i. date of unloading or reloading;
  - ii. volumes unloaded or reloaded per ship;
  - iii. the name of the terminal customer;
  - iv. name and size of the ship using the facility;
- b) the planned unloading or reloading at the LNG facilities in a daily resolution for the next month specifying the market participant and the name of the terminal customer (if different from the market participant).

48. In addition to transparency platforms, LNG facility operators publish a range of additional information on their websites.

GLE has developed, at the request of the CEER, a common platform which provides direct access to the websites of its members, who have voluntarily undertaken to implement a Transparency Template, a harmonised transparency tool which, by respecting the diversity of each member's business models and regulatory environments, is suitable for all LNG terminal operators to facilitate shippers' access to LNG terminals. To date, 16 operators have implemented the Transparency Template.

Following the example of LNG, GSE has developed a common platform that provides direct access to the websites of its members, who have voluntarily undertaken to implement a Transparency Template - specifically for storage - on their websites.

49. The GIE website also includes:

- an LNG map showing the main characteristics of the 23 large LNG terminals and 4 smaller LNG terminals in Europe (figures for 2015). It provides information on LNG terminals under construction, and planned projects;
- a map of storage facilities showing the main characteristics of the 204 storage facilities in Europe (operational, under construction or planned), including 181 facilities in the EU 28.

### 1.2.6. **Monitoring transparency platforms**

50. As regards the monitoring of the Belgian entities mentioned above, the CREG ensures that the regulations and laws in force are complied with by the primary data owners, TSOs and data providers<sup>51</sup>. At the European level, the Agency for the Cooperation of Energy Regulators (hereinafter: ACER) and the European Commission are responsible for monitoring transparency platforms. More detailed explanations of these authorities is presented in Chapter 2.

51. Both the ENTSO-E and ENTSO-G transparency platforms have been subject to more detailed checks, which are detailed in Chapter 3 of this study.

However, to the best of the CREG's knowledge, the European platforms AGSI+ ALSI have not been subject to any checks by the European authorities.

52. Alongside, through and in association with the above-mentioned Regulations, the REMIT Regulations<sup>52</sup> (see Figure1) lay down rules which prohibit abusive practices which affect wholesale energy markets, in line with the rules of financial markets and the proper functioning of these wholesale energy markets. The 2 transparency platforms therefore work in an environment in symbiosis with REMIT<sup>53</sup>, which is now presented in the following section.

## 1.3. **REMIT<sup>54</sup> - INTEGRITY AND TRANSPARENCY OF THE WHOLESALE ENERGY MARKET**

### 1.3.1. **Legal framework**

53. The REMIT legislation for wholesale energy markets is based on the following European regulations:

- Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency (hereinafter: 1227/2011);
- Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and 8(6) of Regulation (EU) No 1227/2011 of the European

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<sup>51</sup> See Article 24 of Regulation 715/2009 and Article 19 of Regulation 714/2009, as well as Article 4 (6) of Regulation 543/2013. At the Belgian level, the electricity law stipulates in Article 23, §2, 8°, that the Commission shall monitor compliance by the grid operator and electricity companies with the obligations incumbent on them under the present law and its implementing decrees, as well as with other legislative and regulatory provisions applicable to the electricity market, in particular as regards cross-border issues and matters covered by Regulation (EC) No 714/2009. This control by the CREG also encompasses Regulation 543/2013, which states in its recital 14 that "*References to Regulation (EC) No 714/2009 in other legal acts shall be understood as also referring to this Regulation.*" As regards the gas law, it stipulates in Article 15/14, §2, 5°, that the Commission shall monitor compliance by the natural gas transmission system operators, LNG facility operators and natural gas storage facility operators, as well as natural gas companies, with the obligations incumbent on them under the present law and its implementing decrees, as well as with other legislative and regulatory provisions applicable to the natural gas market, in particular as regards cross-border issues and matters covered by Regulation (EC) No 715/2009.

<sup>52</sup> Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency  
Commission Implementing Regulation (EU) No 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency.

<sup>53</sup> <https://www.acer-remit.eu/portal/public-documentation>.

<sup>54</sup> Regulation on Wholesale Energy Market Integrity and Transparency.

Parliament and of the Council on wholesale energy market integrity and transparency (hereinafter 1348/2014).

Most of the articles of these Regulations entered into force on the twentieth day following their publication in the Official Journal of the European Union. All articles of these Regulations have applied since 7 July 2016.

At the Belgian level, the

- law of 29/04/1999 on the organisation of the electricity market (hereinafter: the electricity law) and,
- law of 12/04/1965 on the transport of gaseous and other products by pipeline (hereinafter: the gas law),

implement all or part of the provisions of the above Regulations.

### 1.3.2. The purpose of REMIT

54. REMIT's objective<sup>55</sup> is to provide a specific European regulatory framework for the wholesale market in order to improve its transparency and functioning by preventing abuse (market manipulation, attempted market manipulation or insider trading) and, where appropriate, by punishing them (sanctions). In this way, pricing in the wholesale market should be based on a correct interaction between supply and demand.

55. REMIT can be graphically summarised in Figure 4, which shows its main activities. An explanation of the articles of Regulations 1227/2011 and 1348/2014 is given in the following paragraphs.

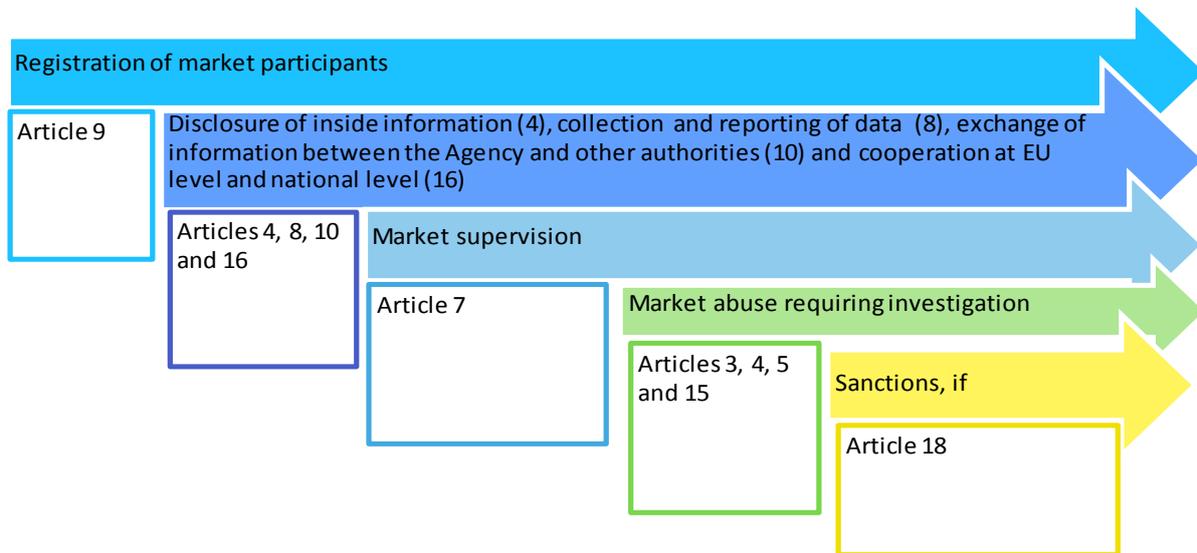


Figure 4: the main activities of REMIT (1227/2011)  
Source: CREG

<sup>55</sup> The CREG has published a presentation of REMIT on its Website at <http://www.creg.be/fr/professionnels/fonctionnement-et-monitoring-du-marche/remit>. See also <http://www.creg.be/fr/professionnels/fonctionnement-et-monitoring-du-marche/remit/contexte-et-reglement-remit>.

56. Continuing its mission to work with national regulatory authorities to apply Regulation 1227/2011 in a coordinated and uniform manner, ACER published the fourth edition<sup>56</sup> of its "Guidance on the application of Regulation (EU) No. 1227/2011 of the European Parliament and the Council of 25 October 2011 on wholesale energy market integrity and transparency", on 17 June 2016. In accordance with Article 16 of Regulation 1227/2011, these non-binding guidelines, which are also made available to market participants, include the definitions of wholesale energy products<sup>57</sup> (section 3.2), the wholesale energy market (section 3.3) and market participants (section 3.4), the terms of implementation of the obligation to disclose insider information (chapters 5 and 7) and the implementation of the obligations incumbent on persons professionally arranging transactions (PPAT) (Chapter 9).

57. ACER provides regularly updated questions and answers<sup>58</sup> to market participants, relating in particular to:

- i. Q&A on REMIT<sup>59</sup>;
- ii. Frequently Asked Questions (FAQs) on REMIT fundamental data and inside information collection<sup>60</sup> ;
- iii. Frequently Asked Questions (FAQs) on REMIT transaction reporting<sup>60</sup>.

### 1.3.3. Scope

58. REMIT applies to market participants<sup>61</sup> entering into transactions in wholesale energy markets. Regardless of where in the European Union and how they are traded, wholesale energy products to be declared are:

- contracts for the physical supply of electricity or natural gas;
- derivative products related to the natural gas and/or electricity produced, traded or supplied;
- contracts and derivative products related to the transmission of electricity or natural gas.

REMIT does not apply to supply and distribution contracts for end customers, with the exception of end users whose technical capacity is equal to or greater than 600 GWh/year<sup>62</sup>.

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<sup>56</sup> See the update at:

[https://www.acer-remit.eu/portal/custom-category/remit\\_guidance\\_and\\_recommendations](https://www.acer-remit.eu/portal/custom-category/remit_guidance_and_recommendations)

<sup>57</sup> See also Article 2 (4) of 1227/2011.

<sup>58</sup> [https://www.acer-remit.eu/portal/custom-category/remit\\_questions](https://www.acer-remit.eu/portal/custom-category/remit_questions).

<sup>59</sup> <http://www.acer.europa.eu/en/remit/qanda/pages/default.aspx>. The Q&A is published as a pdf document divided into five sections:

- background information on REMIT;
- role of the Agency;
- REMIT Definitions;
- obligations and prohibitions for market participants;
- timeline of the implementation.

The Q&A, like the guidance, will be updated from time to time to reflect changing market conditions and the experience gained by NRAs and the Agency from the implementation of REMIT and through feedback from market participants and other stakeholders.

<sup>60</sup> <https://www.acer-remit.eu/portal/public-documentation>.

<sup>61</sup> any person, including transmission system operators, who enters into transactions, including the placing of orders to trade, in one or more wholesale energy markets.

<sup>62</sup>subject to the answers provided in the document Q&A on REMIT, III. 3.42.

Articles 3 (insider trading) and 5 (prohibition of [attempted] market manipulation) of REMIT therefore apply to wholesale energy products which are not financial instruments subject to the Market Abuse Regulation (MAR - see paragraph 92) and wholesale energy products which are financial instruments but which are not admitted (or have been the subject of an application for admission) to the regulated market, an MTF or an OTF or whose price or value does not depend on a financial instrument admitted (or for which an application for admission has been made) to the regulated market, an MTF or an OTF (Article 2 of 596/2014 - MAR). However, the obligation to disclose insider information (Article 4) is upheld.

#### 1.3.4. The REMIT Regulation

59. Regulation 1227/2011 lays down the following provisions:

- the prohibition of insider trading (Article 3);
- the prohibition of market manipulation or attempted manipulation (Article 5);
- the obligation for market participants to disclose inside information <sup>63 64</sup>(Article 4.1);
- the obligation to collect and report data (Article 8);
- the obligation to notify - via a platform to ACER and the CREG - in the event of exemption from REMIT:
  - linked to a transaction that makes it possible to comply with existing contractual obligations, or which is made with the agreement of the system operators concerned, in order to ensure the safe and reliable operation of the system (Article 3.4 (b));
  - linked to delayed public disclosure of inside information (Article 4 (2));
- the obligation to register market participants with the national regulatory authority (Article 9);
- the obligation for persons professionally arranging transactions to anticipate effective provisions for detecting violations of these prohibitions and to warn the CREG of any non-compliance (Article 15);

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<sup>63</sup> List of Inside Information Platforms – see <https://www.acer-remit.eu/portal/list-inside-platforms>.

<sup>64</sup> "Inside information" "means information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products (Article 2, 1).

However, "information" refers to:

a) information to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, in particular the guidelines and network codes adopted under these Regulations;

b) information concerning the capacity and use of facilities for the generation, storage, consumption or transmission of electricity or natural gas, or information relating to the capacity and use of LNG facilities, including the scheduled or unscheduled unavailability of such facilities;

c) information which must be disseminated in accordance with legal or regulatory provisions at the EU or national level, with market rules and contracts or customs in force on the wholesale energy market in question; to the extent that, if made public, such information would be likely to have a significant influence on the prices of wholesale energy products;

d) any other information that a reasonable market participant would be likely to use in making a decision to enter into a transaction or trade a wholesale energy product.

- the obligation for the CREG<sup>65</sup> and the competent authorities to notify ACER if there are reasonable grounds for suspicion of REMIT violations occurring on its territory or in another Member State (Article 16).

60. The Implementing Regulation 1348/2014 pursuant to Article 8(2) and 8(6) of Regulation 1227/2011 lay down the rules for the transmission of information to be provided to ACER under REMIT, in accordance with the simplified diagram below.

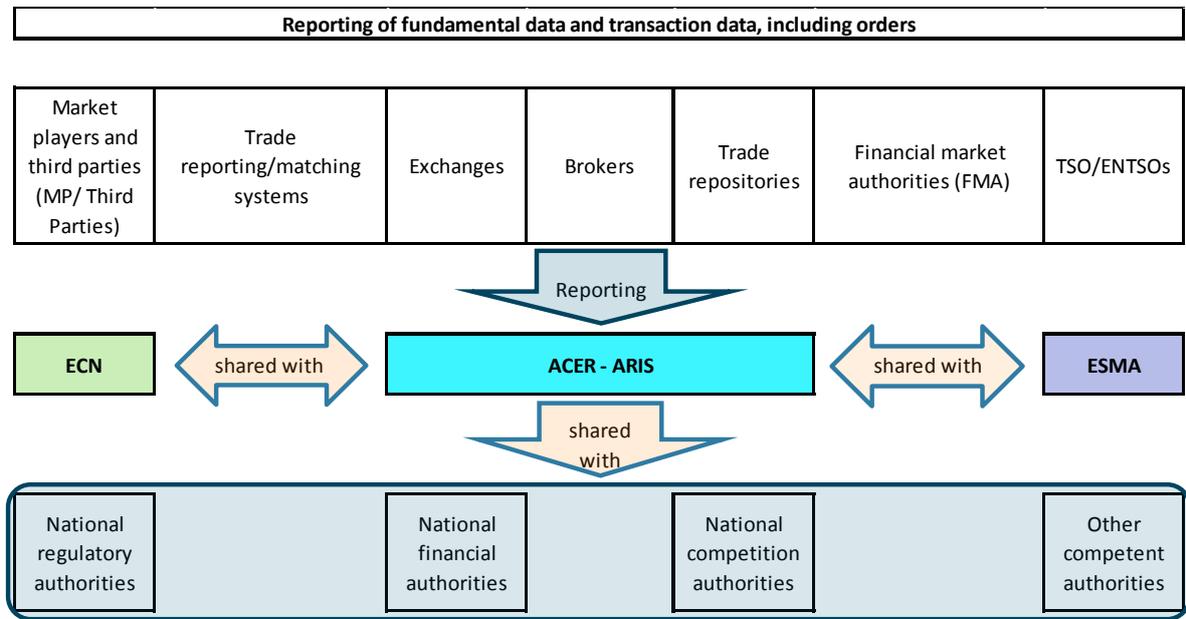


Figure 5: Reporting of fundamental data and transaction data, including orders  
Source: CREG

This Implementing Regulation is intended to:

- prescribe the details of the data on wholesale energy products (Articles 3 to 6 and Annexes) and the fundamental data (Articles 8 and 9) to be reported;
- establish appropriate channels for reporting information (Articles 6, 10 and 11);
- establish the timing and frequency of reporting (Article 7).

The entry into force of this Implementing Regulation entails two obligations for market participants:

- the obligation to register with a national regulatory authority for wholesale market transactions subject to reporting to the ACER (Articles 8, 1 and 9 of REMIT)
- the obligation to report transactions, including orders and fundamental data (Article 8 of REMIT).

<sup>65</sup> See also paragraphs 116 et seq.

### 1.3.5. **Market supervision and sanctions**

61. The supervision of wholesale energy markets (Articles 1 (1) and 7 (1) is carried out by the Agency for the Cooperation of Energy Regulators in close cooperation with national regulatory authorities (Articles 7 (2) and 16 (1)).

If a national regulatory authority identifies suspicious transactions, it must inform<sup>66</sup> ACER even if the violation concerns another Member State (Article 16 (2)).

According to Article 15, persons professionally arranging transactions (PPATs) must also inform<sup>66</sup> their national regulatory authority if they suspect that a transaction might violate Articles 3 or 5.

62. Article 13 of Regulation 1227/2011 stipulates in particular that:

- National regulatory authorities shall ensure that the prohibitions set out in Articles 3 and 5 and the obligation set out in Article 4 are applied;
- Each Member State shall ensure that its national regulatory authorities have the investigatory and enforcement powers necessary for the exercise of that function ;

under the supervision of ACER (Article 16 (1)).

63. The electricity law and the gas law give the CREG<sup>67</sup> - in compliance with the respective powers of the Belgian Competition Authority and the FSMA - powers of investigation and enforcement, and if necessary, sanctions, for the application of the prohibitions set out in Articles 3 to 5 of Regulation 1227/2011. Article 18 of the latter also provides that the penalties provided for must be effective, dissuasive and proportionate, reflecting the nature, duration and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation.

### 1.3.6. **Registration of market participants**

64. Market participants who enter into transactions<sup>68</sup> on the wholesale energy market must register with a national regulatory authority (NRA), which is the CREG in Belgium's case, in accordance with Article 9.

To this end, ACER has developed a platform - CEREMP<sup>69</sup> - to register market participants, and has made it available to NRAs to enable them to register their market participants.

All NRAs transmit data on registered market participants (MPs) which is in their respective registers, to ACER. A consolidated European register<sup>70</sup> is established by the Agency.

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<sup>66</sup> on the ACER notification platform at <https://www.acer-remit.eu/np/home>.

<sup>67</sup> On 6 September 2012, the CREG published study (F)120906-CDC-1168 on the measures to be adopted under Belgian law pursuant to Regulation (EC) No 1227/2011 of 25 October 2011 on the integrity and transparency of the wholesale energy market.

<sup>68</sup> for which reporting is compulsory under Article 8, paragraph 1.

<sup>69</sup> Centralised European Register of Energy Market Participants.

<sup>70</sup> <https://www.acer-remit.eu/portal/european-register>.

As of 31 December 2016, 117 market participants were registered for the Belgian market (source: REMIT Quarterly issue No. 7 / Q4 2016)<sup>71</sup>.

### 1.3.7. Reporting of market participants' data

65. Article 8 of REMIT stipulates that market participants must provide:

- ACER with the data regarding their wholesale energy market transactions<sup>124</sup> data, including trades (Article 8 (1));
- ACER and NRAs with information on the capacity and use of facilities for the generation, storage, consumption or transmission of electricity or natural gas, or information on the capacity and use of LNG infrastructure, including the scheduled or unscheduled unavailability of such facilities (Article 8 (5)).

The details of the scope, content, frequency and format of *reporting* are laid down in the Implementing Regulation (EU) No. 1348/2014 and in the ACER manuals<sup>72</sup> regarding *reporting* the data available on the REMIT PORTAL of ACER<sup>73</sup>:

- Requirements for the registration of Registered Reporting Mechanisms (RRM);
- Manual of Procedures on transactions and fundamental data reporting under REMIT (MoP);
- Transaction Reporting User Manual (TRUM).

The reporting of data to ACER is organised by the ARIS computer system illustrated in Figure 6.

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<sup>71</sup> In August 2017, 120 market participants were registered in Belgium.

<sup>72</sup> <https://www.acer-remit.eu/portal/public-documentation> and

[https://www.acer-remit.eu/portal/custom-category/acer\\_remit\\_reporting\\_user\\_package](https://www.acer-remit.eu/portal/custom-category/acer_remit_reporting_user_package).

<sup>73</sup> <https://www.acer-remit.eu/portal/>.

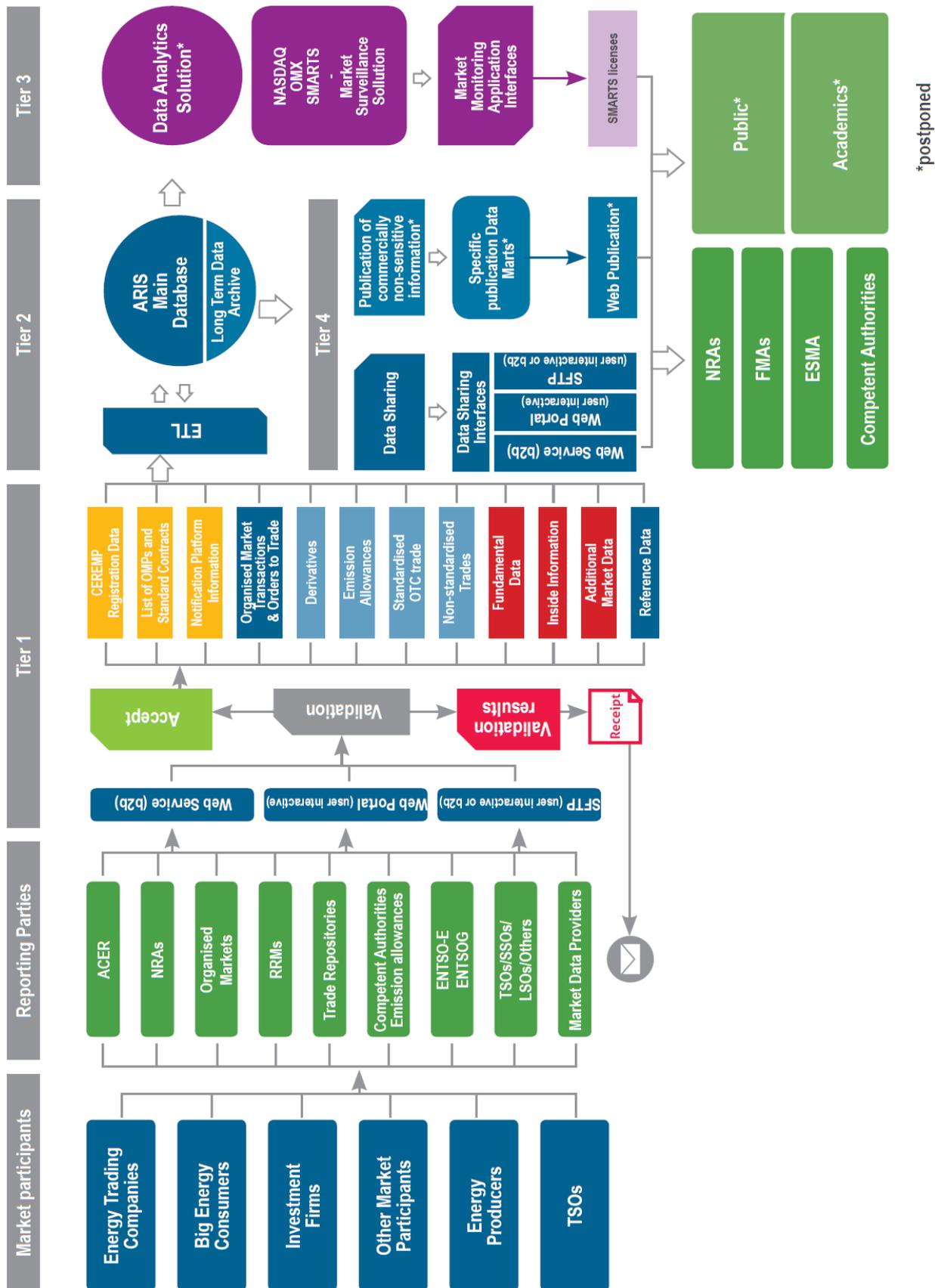


Figure 6: ARIS – the REMIT computer system of ACER

Source: ACER, REMIT – Transaction Reporting User Manual (TRUM) of 9 May 2016 page 13/159

The first column of Figure 6 lists the market participants (Article 2 (7)) that may be subject to registration as stipulated in Article 9, while column 2 lists the reporting parties (Article 8 (4)) and regulators. The data are communicated by the reporting parties to the ARIS computer system (the REMIT computer system of ACER) through three channels:

- Interactive Web Portal
- Secure File Transfer Protocol (SFTP)
- Web Service.

Tiers 1 to 4 represent the 4 levels of ACER's ARIS computer system, with:

- Level 1 which collects the fundamental data (Articles 8 and 9 of 1348/2014) and transactions (Articles 3 to 5 of 1348/2014). At this stage, the data format is verified, and in the event of non-conformities, a message is sent to the defaulting party;
- Level 2 concerns the provision of ACER's database, which includes transaction data, fundamental data, reference data and data on the registration of market participants;
- Level 3 is the market monitoring system. Based on the database constructed at level 2, ACER uses a NASDAQ analysis tool called SMARTS to study the markets and detect abuses. This monitoring system was proposed by ACER to the NRAs via a sub-licence contract;
- Level 4 concerns the sharing of information held by ACER. The first part of information sharing is secured, as stipulated in article 10 of 1227/2011. The mechanism for information sharing between NRAs, regulatory and competition financial authorities, ESMA and other competent authorities is governed by a data sharing agreement. For example, the NRAs must draw up a security policy and submit it to ACER and their peers in a peer-review in which the operational reliability (Article 12) of the NRA is analysed. The use of information received via data sharing is governed by Articles 17 (4) and 17 (5). The second part of information sharing is intended for the public and the academic world. In this context, the information must be presented in aggregate format, to prevent identification of a market player or market place (Articles 12 (2) and 17 (3)); these data may be used, inter alia, for statistical analyses and scientific reports.

66. In its REMIT Quarterly (Issue n°8/Q1 2017), Acer revealed that the total amount of data communicated to ARIS exceeded 45 million items for the month of March alone. Twelve months earlier, this number ranged from 25 to 30 million.

67. A few exemptions from the insider trading prohibition (Article 3.4 (b)) and the obligation to disclose inside information (Article 4.2) are provided for the market participant informs the NRA and ACER via a reporting platform at <https://www.acer-remit.eu/np/home>, which also receives suspicious transaction reports (STRs) as laid down in Articles 15 and 16 (2) of Regulation 1227/2011.

68. The confidentiality, integrity and protection of the information received and/or transmitted within REMIT is ensured by ACER and the NRAs.

#### 1.3.8. **The role of ACER and the CREG in the context of REMIT**

69. The monitoring of wholesale energy markets is assigned by REMIT to ACER, in collaboration with the NRAs, to detect possible market abuse. Specifically, in the event of suspicion of abuse, ACER may request the CREG to investigate alone and if necessary, jointly with other regulators, in the context of cross-border abuse. However, the NRA may also detect market abuse on its own or by warning a market participant or a PPAT and carry out its own investigation on its own initiative.

The Memorandum of Understanding<sup>74</sup> between ACER and each NRA details the practical terms for cooperation between energy regulators, the notifications of NRAs to ACER in the event of suspected REMIT breaches, the terms for ACER to request NRAs to initiate an investigation or to transmit information, and the coordination of investigations in cross-border cases.

70. The CREG continues its market monitoring mission with the collaboration<sup>75</sup> of the Belgian Competition Authority (BCA) and the Financial Services and Markets Authority (FSMA<sup>76</sup>). In this regard, the legislator has authorised confidential information to be exchanged between these institutions; the provisions of the gas and electricity laws relating to professional secrecy and the safeguarding of commercially sensitive information have been adapted. The powers of investigation and penalties granted to the CREG in the event of abuse of the REMIT Regulation were transposed into the law of 8 May 2014 on various energy-related provisions.

71. Table 4 summarises the main tasks of ACER and the CREG in the context of REMIT.

Tasks	ACER	CREG	REMIT
Data collection	transactions and orders fundamental data	receives data from ACER and may collect additional national data	article 8 (1) article 8 (5)
Market supervision	European	National	articles 7, 15 and 16
Investigation	coordinates in the event of cross-border	National	Articles 3, 4, 5 and 15
Sanction	-	National	Article 18

Table 4: The tasks of ACER and the CREG as regards REMIT-related matters  
Source: CREG

Chapter 2 discusses in more detail the roles played by each competent authority under the three pieces of legislation discussed in this study.

**Links between REMIT and Transparency & Financial Instruments**

**1.3.9. Links between REMIT and Transparency**

72. Regulation 1227/2011, together with its Implementing Regulation 1348/2014, aims at ensuring the integrity and transparency of the wholesale energy market, taking into account European legislation on transparency in particular (see section I.2).

73. Article 4 (4) of Regulation 1227/2011 stipulates that the disclosure of inside information, including in aggregated form, in accordance with Regulation (EC) No 714/2009 or (EC) No 715/2009, or guidelines and network codes adopted pursuant to those Regulations constitutes simultaneous, complete and effective public disclosure. However, section 7.3 of the ACER Guidance of 7 June 2016

<sup>74</sup> Multilateral Memorandum of Understanding between the Agency for the Cooperation of Energy Regulators and National Regulatory Authorities and market monitoring bodies concerning cooperation and coordination of market monitoring under Regulation (EU) N° 1227/2011 of the European Parliament and the Council on wholesale energy market integrity and transparency (REMIT).

<sup>75</sup> See also chapter 2 on "Authorities", page 50.

<sup>76</sup> By a law of 27 June 2016, the legislator amended Article 75 §1, 5° of the "Financial Law", in order to allow the FSMA to communicate confidential information to the CREG, in derogation from the professional secrecy to which it is bound, within the limits of REMIT.

highlights that if it is simultaneous, full and effective disclosure within the meaning of article 4.4 of Regulation 1227/2011, it is not necessarily disclosure made within the prescribed time frame that requires information to be available prior to wholesale energy trading.

74. Article 8, paragraph 5, of Regulation 1227/2011 lays down the data to be collected by market participants and, pursuant to Article 8 (2) and 8 (6) of the same Regulation, Commission Implementing Regulation 1348/2014 lays down rules for the transmission of information to ACER. The purpose of this Implementing Regulation is, inter alia, to define the details of the data concerning wholesale energy products and the fundamental data to be reported (Articles 8 and 9 concerning the rules applicable to the reporting of fundamental data concerning electricity and gas).

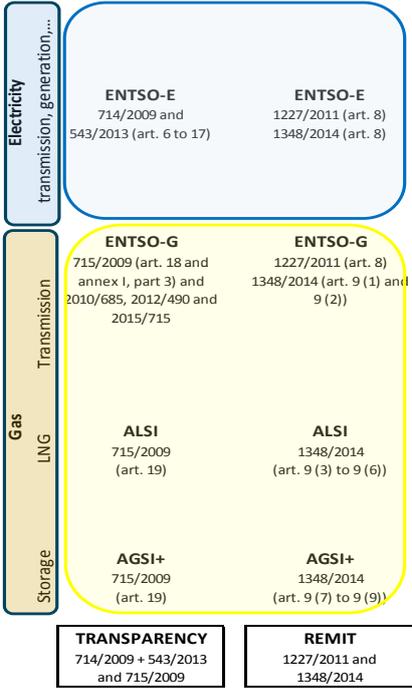


Figure 7: Data to be communicated to the transparency platforms in accordance with the Transparency and REMIT Regulations  
Source: CREG

Figure 7 shows the articles, the data required by REMIT which corresponds to those required the Transparency Regulations, namely Regulations 714/2009 (Annex I) and 543/2013 (Articles 6 to 17) for electricity and 715/2009 (Articles 18 and 19 and Annex 1, Part 3) and Commission Decisions 2010/685, 2012/490 and 2015/715, for gas.

	(Fundamental) data	electricity	gas		
			transmission	LNG	Storage
TRANSPARENCY	714/2009	Annex I, 5			
	543/2014	Articles 6 to 17			
	715/2009		Article 18 and Annex I, 3.3	Article 19	Article 19
	2010/685		replaces Annex I, 3		
	2012/490		replaces Annex I, 2.2		
	2015/715		amendments to Annex I		
REMIT	1227/2011		Article 8 (5)	Article 8 (5)	Article 8 (5)
	1348/2014	Article 8	Articles 9 (1) and 9 (2)	Articles 9 (3) to 9 (6)	Articles 9 (7) to 9 (9)

Table 5: Comparative table of data (fundamental) to be reported/disclosed in accordance with Transparency and REMIT  
Source: CREG

The ENTSOs report to the Agency, on behalf of market participants, the information required by Regulation 1348/2014 in Articles 8 (1) and (2) for electricity, and 9 (1) for gas.

The TSOs or third parties acting on their behalf provide the Agency and, at their request, national regulatory authorities, with the information specified in Articles 8 (3) for electricity and 9 (2) for gas.

The information on LNG and gas storage facilities reported by the operators to the Agency and, on request, to national regulatory authorities, is set out in Articles 9 (3) to (6) and 9 (7) to (9) of Regulation 1348/2014 respectively.

75. What is the difference between "Transparency Information" and "Inside Information" under REMIT?

In section 5.2 of the fourth version of its Guidelines<sup>77</sup>, ACER defines these two concepts<sup>78</sup>.

*"Transparency information" refers to all data that shall be published under the transparency obligation of Regulation (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes adopted pursuant to those Regulations. Transparency information is cited in Article 2(1)(a) of REMIT as a type of information that may constitute inside information.*

*The concept of "inside information" comprises, on the one hand, the transparency information that is likely to have a significant effect on the prices of wholesale energy products, but, on the other hand, goes further and also includes other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product, insofar as this information is likely to have a significant effect on the prices of wholesale energy products.*

*This means that transparency information is normally periodic, structured data subject to Regulations (EC) No 714/2009 and (EC) No 715/2009 including information referred to in the Commission Regulation (EU) No 543/2013.*

*Inside information should normally be considered as ad hoc, structured data that is likely to have a significant effect on price that has not been disclosed to the market. Such a requirement goes beyond the periodic and regular publication of data under the above regulations and may be fulfilled by certain transparency information.*

*Therefore, inside information may relate to any item of information that is within the scope of the above regulations and which meets the relevant requirements, as well as the following further information insofar as this information is likely to have a significant effect on the prices of wholesale energy products:*

- *Information relating to the capacity and use of facilities for production of electricity or natural gas, including planned and unplanned unavailability of these facilities;*
- *Information relating to the capacity and use of facilities for storage of electricity or natural gas, including planned and unplanned availability of these facilities;*
- *Information relating to the capacity and use of facilities for consumption of electricity or natural gas, including planned and unplanned unavailability of these facilities;*

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<sup>77</sup> "Guidance on the application of Regulation (EU) N° 1227/2011 of the European Parliament and the Council of 25 October 2011 on wholesale energy market integrity and transparency" (4th Edition), published 17 June 2016.

<sup>78</sup> Pages 28 to 30.

- *Information relating to the capacity and use of facilities for transmission, including planned or unplanned unavailability of these facilities;*
- *Information relating to the capacity and use of LNG facilities, including planned and unplanned unavailability of these facilities;*
- *Information required to be issued in accordance with legal or regulatory provisions at Union, or National level;*
- *Information required to be issued in accordance with Market Rules;*
- *Information required to be issued in accordance with Contracts;*
- *Information required to be issued in accordance with Customs on the market;*
- *other information that a reasonable market participant would be likely to use as part of the basis of its decision to enter into a transaction relating to, or to issue an order to trade in, a wholesale energy product.*

*According to Commission Regulation (EU) No 543/2013, information relating to planned unavailability of 100 MW or more of a consumption unit, generation unit or of interconnections and in the transmission grid shall be made available to the public through the European Network of Transmission System Operators for Electricity (ENTSO-E) transparency platform.*

*Concerning markets for natural gas, the Agency recognises the difficulties of setting a single European threshold for inside information due to the wide differences in market sizes, structures and liquidity across Europe.*

*Regardless of whether indicative thresholds are applied by market participants, NRAs should ensure that market participants are aware that a planned or unplanned change in the capacity or output of any size at a facility for production, storage, consumption or transmission of natural gas or electricity may constitute inside information if it meets the criteria outlined in Article 2(1) of REMIT. It is up to market participants to judge whether information that they own constitutes inside information and therefore needs to be made public.*

Regulation 543/2013 allows ENTSO-E to publish this inside information on its central transparency platform, even if the threshold is not reached. This falls within the objective of the Regulation, as stated in recital 12: *"TSOs are often the primary source of relevant fundamental information. They are also used to collect and assess large amounts of information for system operation purposes. In order to provide an overall view of relevant information across the Union, TSOs should facilitate the collection, verification and processing of data..."*. Nevertheless, the responsibility for disclosing inside information remains in all cases with market participants. Article 4 (1) of REMIT stipulates that it is the Market participants [who] shall publicly disclose in an effective and timely manner inside information which they possess [...]. They must therefore take all necessary measures for its disclosure, even if, for example, a TSO refuses to disclose it for whatever reason. As a last resort, the market participant will set up its own transparency website and the tools required to facilitate access to information (RSS Feed).

*The notion of "inside information" is likely to be subject to interpretation by national and European Courts. Rulings on the definition of inside information under MAD<sup>79</sup>, insofar as the same concepts are applied under this Directive, should also be relevant in this respect<sup>80</sup>.*

As regards inside information, MAR - which repealed MAD - states in Article 7, 5 that "*ESMA shall issue guidelines to establish a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets as referred to in point (b) of paragraph 1. ESMA shall duly take into account specificities of those markets.*".<sup>81</sup>

In this context, ESMA published (ESMA/2016/1480 EN) the "Guidelines on the Market Abuse Regulation<sup>82</sup>" on 17 January 2017. These guidelines, which have entered into force, include indicative examples of inside information, linked:

- directly to commodity derivatives;
- indirectly to commodity derivatives without a related spot market;
- directly to a commodities spot contract.

On the one hand, these guidelines do not provide any clarification on the other criteria of the definition of inside information, nor, on the other hand, on the notions of information accuracy and price sensitivity, nor do they impose any further disclosure requirements regarding information.

76. The collection of data under Article 8 is the focus of three pieces of legislation

On the one hand, Article 8 (5) of REMIT sets out the collection of (fundamental) data as listed in Transparency Regulations 715/2009 and 543/2013 and, on the other hand, Article 8 (1) of REMIT sets out the communication obligations - vis-à-vis ACER - of market participants with regard to their wholesale energy market transactions, including their trades, as also specified in Regulation 648/2012 (EMIR) and Directive 2004/39/EC (MiFID), which will be repealed with effect from 3 January 2018.

77. Table 6 sets out the obligations to report and/or disclose the information prescribed in the Transparency and REMIT Regulations. Depending on the terminology used, disclosure refers either to the information that will be made public (e.g. ENTSOs, UMM) or to the reporting of data that will be transmitted to the competent authorities and which will not be made public, except perhaps in aggregate form.

As such, the data sent by the TSOs to ENTSOs in the context of Transparency will be published on transparency platforms, while fundamental data disaggregated in the context of REMIT will be reported to ACER without being published.

Table 6 also shows references linked to the responsibilities of the competent authorities and sanctions for violations of the 5 Regulations referred to by market participants.

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<sup>79</sup> The MAD Directive was repealed by MAR with effect from 3 July 2016.

<sup>80</sup> Section 5.2 of the 4th Edition of the Guidelines, page 30.

<sup>81</sup> or Article 7, § 1, b, of MAR.

<sup>82</sup> [https://www.esma.europa.eu/system/files\\_force/library/esma-2016-1480\\_fr.pdf](https://www.esma.europa.eu/system/files_force/library/esma-2016-1480_fr.pdf).

	Reporting	Publication	Liability/Sanction
Transparency 714/2009		art 15: information <b>Annex I, 5: Transparency - data</b>	art 9 supervision by ACER art 19 NRA ensures compliance and cooperates with ACER and the Commission art 22 sanctions by the Member States and the Commission
543/2013		art 4 (1) & art 4 (2) submission and publication of data art 6 to 17: data to be submitted by the primary data owners	art 4 (6) NRA ensures compliance with obligations art 18 liability of the primary data owner, the data provider and ENTSO-E not invoked except in cases of gross negligence or wilful misconduct.
715/2009		art 19: information to be made public by operators of LNG installations and LNG storage facilities art 18 transparency requirements for TSOs <b>Annexe I (3)</b> information to be published at all relevant points and frequency of publication (Commission decision of 10/11/2010)	art 9 supervision by ACER art 24 NRA ensures compliance and cooperates with ACER and the Commission art 27 sanctions by the Member States and the Commission
REMIT 1227/2011	art 8 data collection (art 8 (1) transactions and orders and art 8 (5) fundamental data) art 8 (3) Derivative transactions reporting, central counterparties and repositories: Directive 2004/39/EC = 1227/2011 art 9 Registration of market participants	art 4 Obligation to disclose inside information art 4 (4) of 1227/2011 = 714/2009 - 543/2013 - 715/2009	art 1 (3) and art 16 cooperation between competent authorities art 7 supervision art 10 exchange of information between the Agency and other authorities art 13 implementation of prohibitions on market abuse (investigative powers) art 15 obligations of persons professionally arranging transactions art 18 sanctions
1348/2014	art 3 to 5 reporting of transactions art 6 channels of transmission of transactions art 8 (electricity - art 6 to 17 of 543/2013) and art 9 (gas - annex I of 715/2009) fundamental data art 11 (2) responsibility for completeness, accuracy and timely reporting of the information to be reported in art 6, 8 and 9 art 12 entry into force of reporting annex tables 1 to 4	art 10 (1) procedures for the transmission of inside information	art 10 (3) exchange of information between ACER and other authorities

Table 6: Comparative table of data to be reported according to REMIT and published according to Transparency and REMIT, and any associated sanctions  
Source: CREG

## The practical application of REMIT in the field

78. In 2013, 12 new cases had been reported to NRAs by or through ACER. In 2014 as in 2015, there were 33 cases. In 2016, 29 cases were notified. Notification of a case does not always mean that REMIT has actually been breached. Since the entry into force of REMIT, two cases have been the subject of fines.

The first case<sup>83</sup> concerned an alleged market manipulation by Iberdrola in Spain. According to the Spanish regulator *Comisión Nacional de los Mercados y la Competencia* (CNMC), Iberdrola artificially inflated the daily market prices between 30 November and 23 December 2013 by offering the market part of the available hydroelectric capacity at a higher price than competitive prices. Specifically, the manipulation was proven since the volume proposed at €70/MWh (45 GWh) at the end of November 2013 fell to 13 GWh during the period of alleged market manipulation. At the same time, the proposed volume of €90/MWh (40-50 GWh) at the end of November 2013 increased to 105 GWh. These actions would have increased the daily market prices from €45/MWh - €55/MWh at the end of November 2013 to €80/MWh - €90/MWh between 12 and 21 December.

The CNMC bases its finding on two arguments. First, volumes in the water reservoir were higher than in previous years, while Iberdrola offered higher volumes at lower prices. Second, prices in long-term markets were lower than those of the daily market.

According to estimates, the alleged market manipulation would have generated €21.5 million. The fine of €25 million was imposed by the CNMC on 24 November 2015.

Iberdrola appealed this sanction.

The second case concerned a delay in the effective disclosure of inside information by the Estonian transmission system operator Elering. In June 2014, electricity exchanges between Finland and Estonia via the Estlink 2 underwater cable were interrupted following maintenance work.

The fine imposed on 4 November 2015 by the Estonian regulator amounted to €10,000.

The Supreme Court<sup>84</sup> did not uphold the charges against Elering.

### 1.3.10. Links between REMIT and Financial Instruments<sup>85</sup>

79. The purpose of Regulation 1227/2011 is to lay down rules that prohibit abusive practices which affect wholesale electricity and gas markets, in line with the rules applicable to financial markets. In conjunction with financial regulations (see also Article 6 of 1348/2014), it provides for the supervision of wholesale energy markets<sup>86</sup> by integrating the carbon market into them, although emissions

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<sup>83</sup> Public information: <https://www.bloomberg.com/news/articles/2015-12-16/iberdrola-appealing-fine-for-manipulating-market-ceo-says>.  
<https://www.twobirds.com/en/news/articles/2016/spain/spanish-authority-fines-iberdrola-25m-in-first-remit-infringement-decision>.

<sup>84</sup> ACER's annual report on its activities under REMIT in 2015 (page 45).

<sup>85</sup> see section 1.4 Financial Instruments.

<sup>86</sup> Recital (5) of 1227/2011 states that "Wholesale energy markets encompass both commodity markets and derivative markets, which are of vital importance to the energy and financial markets, and price formation in both sectors is interlinked. They include, inter alia, regulated markets, multilateral trading facilities and over-the-counter (OTC) transactions and bilateral contracts, direct or through brokers".

allowances (see also paragraph 102) are not qualified as wholesale energy products within the meaning of REMIT.

80. Initially, Regulation 1227/2011 was intended as a complement to Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (MAD<sup>85 79</sup>). There was still an overlap between financial regulation and energy regulation, particularly in terms of transactions entered into via energy exchanges, but REMIT laid down specific provisions to ensure consistency (Article 6 (1), a)) between the two regulations.

Since 3 July 2016, Regulation 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (MAR) has clarified this problem (see paragraph 91).

Article 7 of REMIT provides for joint supervision with the financial authorities, while Articles 10 and 16 set out the exchange of information between ACER and other authorities (including the CREG, FSMA<sup>87</sup>, BCA, ESMA, etc.) and their cooperation at the EU and national level.

81. REMIT integrates all of these objectives into a single Regulation (and an Implementing Regulation), namely the prohibition of abusive practices, investigations, sanctions, reporting of transactions, the registration of market participants, etc., whereas the legislation relating to Financial Instruments is pluralistic, comprising of several Regulations and Directives to legislate each of these objectives.

82. Table 7 shows the information reporting and/or disclosure obligations prescribed in the REMIT and Financial Instruments legislation for wholesale energy products. Depending on the terminology used, disclosure refers either to the information that will be made public or to the reporting of data that will be transmitted to the competent authorities and which will not be made public, except perhaps in aggregate form.

Table 7 also shows references linked to the responsibilities of the competent authorities and sanctions for violations of the 2 Regulations by market participants. These two legislations contain similar and mutually reinforcing prohibitions.

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<sup>87</sup> See paragraph 118.

<b>REMIT</b> 1227/2011	<p><b>art 8</b> data collection (<b>art 8 (1)</b> transactions and orders and <b>art 8 (5)</b> fundamental data)</p> <p><b>art 8 (3)</b> Derivative transactions reporting, central counterparties and repositories: Directive 2004/39/EC = 1227/2011</p> <p><b>art 9</b> Registration of market participants</p>	<p><b>art 4</b> Obligation to disclose inside information</p> <p><b>art 4 (4)</b> of 1227/2011 = 714/2009 - 543/2013 - 715/2009</p>	<p><b>art 1 (3) and art 16</b> cooperation between competent authorities</p> <p><b>art 7</b> supervision</p> <p><b>art 10</b> exchange of information between the Agency and other authorities</p> <p><b>art 13</b> implementation of prohibitions on market abuse (investigative powers)</p> <p><b>art 15</b> obligations of persons professionally arranging transactions</p> <p><b>art 18</b> sanctions</p>
1348/2014	<p><b>art 3 to 5</b> reporting of transactions</p> <p><b>art 6</b> channels of transmission of transactions</p> <p><b>art 8</b> (electricity - <b>art 6 to 17</b> of 543/2013) and</p> <p><b>art 9</b> (gas - <b>annex I</b> of 715/2009) fundamental data</p> <p><b>art 11 (2)</b> responsibility for completeness, accuracy and timely reporting of the information to be reported in art 6, 8 and 9</p> <p><b>art 12</b> entry into force of reporting</p> <p><b>annex</b> tables 1 to 4</p>	<p><b>art 10 (1)</b> procedures for the transmission of inside information</p>	<p><b>art 10 (3)</b> exchange of information between ACER and other authorities</p>
<b>Financial Instruments</b> <b>MiFID I:</b> 2004/39/EC	<p><b>art 25 (3)</b> ESMA transmits to ACER the reportings of transactions of energy products (<b>art 10 (3)</b> of 1227/2011)</p>		<p><b>art 51</b> administrative sanctions</p> <p><b>art 58</b> exchange of information</p>
<b>MiFID II:</b> 2014/65/EU		<p><b>art 58</b> position reports per category of position holders</p> <p><b>art 64 and 65</b> organisational requirements for approved publishing mechanisms and for suppliers of consolidated publication systems</p>	<p><b>art 69</b> supervisory powers</p> <p><b>art 70</b> sanctions in the event of violations</p> <p><b>art 72</b> exercise of supervisory powers and sanctioning powers</p> <p><b>art 79</b> the obligation to cooperate</p> <p><b>art 81</b> exchange of information</p>
<b>MiFIR:</b> 600/2014	<p><b>art 26</b> obligation to report transactions (<b>art 8 (1)</b> of 1227/2011 fulfilled obligations)</p>		
<b>EMIR:</b> 648/2012	<p><b>art 9</b> reporting obligation (<b>art 8 (1)</b> of 1227/2011 fulfilled obligations)</p>		<p><b>art 12</b> sanctions</p>
<b>MAR:</b> 596/2014	<p><b>art 16 (1)</b> prevention and detection of market abuse</p>	<p><b>art 17</b> disclosure of inside information</p>	<p><b>art 16 (2)</b> obligations of persons professionally arranging transactions</p> <p><b>art 30</b> administrative sanctions and other administrative measures</p>
<b>CSMAD:</b> 2014/57/EU			<p><b>art 1 (1)</b> minimum rules in terms of criminal sanctions</p> <p><b>art 7 and art 9</b> criminal sanctions for physical/moral persons</p>

Table 7: Comparative table of data to be reported according to REMIT and published according to Transparency and REMIT, and any associated sanctions

Source: CREG

## 1.4. FINANCIAL INSTRUMENTS

### 1.4.1. Legal Framework

83. The purpose of this legislative aspect of this study is to highlight the interactions between REMIT and Financial Instruments.

The legislation relating to Financial Instruments is based in particular on the following European Regulations and Directives:

- European Regulations:
  - Regulation (EU) No **1095/2010** of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC (hereinafter: 1095/2010);
  - Regulation (EU) No **648/2012**<sup>88</sup> of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories - entered into force on 16 August 2012 (**EMIR** or 648/2012);
    - Commission Delegated Regulation<sup>89</sup> (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties;
  - Regulation (EU) No **596/2014**<sup>90</sup> of the European Parliament and of the Council of 16 April 2014 on market abuse and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC (hereinafter **MAR** or 596/2014);
  - Regulation (EU) No **600/2014**<sup>91</sup> of the European Parliament and of the Council of 15 May 2014 on markets in Financial Instruments and amending Regulation (EU) No 648/2012 (hereinafter **MiFIR** or 600/2014);
    - Regulation (EU) **2016/1033** of the European Parliament and of the Council of 23 June 2016 amending Regulation (EU) No. 600/2014 on Markets in Financial Instruments, Regulation (EU) No. 596/2014 on Market Abuse and Regulation (EU) No. 909/2014 on improving securities settlement in the European Union and on central securities depositories (hereinafter: 2016/1033);

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<sup>88</sup> See also Regulations 2017/954 and Delegated Regulations 2016/1178 and 2016/2251 and 2017/323 and 2017/979.

<sup>89</sup> The new treaty makes a distinction between legislative acts and non-legislative activities. Article 290 authorises Parliament and the Council to delegate to the Commission the power to adopt non-legislative acts of general scope supplementing or amending certain non-essential elements of the legislative act. The non-legislative acts thus adopted by the Commission are referred to as 'delegated acts'.

<sup>90</sup> See also Implementing Regulation 2017/1158, Regulation 2016/1011 and Delegated Regulation 2016/958 and 2016/1011.

<sup>91</sup> See also Delegated Regulations 2016/2020, 2016/2021, 2016/2022, 2017/567, 2017/572, 2017/577, 2017/579, 2017/580, 2017/581, 2017/582, 2017/583, 2017/585, 2017/587, 2017/590.

- European Directives and their Implementing Regulations / Delegated Regulations<sup>89</sup>:
  - Directive **2003/6/EC** of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (hereinafter referred to as **MAD I** or 2003/6/EC);
    - Commission Directive **2003/124/EC** of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the definition and public disclosure of inside information and the definition of market manipulation (hereinafter 2003/124/EC);
    - Commission Directive **2003/125/EC** of 22 December 2003 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards the fair presentation of investment recommendations and the disclosure of conflicts of interest (hereinafter: 2003/125/EC)
    - Commission Directive **2004/72/EC** of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions [...] (hereinafter 2004/72/EC).

These four Directives (**2003/6/EC, 2003/124/EC, 2003/125/EC, 2004/72/EC**) were repealed by Regulation 596/2014 (**MAR**).

- Directive **2004/39/EC** of the European Parliament and of the Council of 21 April 2004 on markets in Financial Instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (hereinafter **MiFID I** or 2004/39/EC, repealed with effect from 3 January 2018);
  - Commission Regulation (EC) No **1287/2006** of 10 August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive;
- Directive **2014/57/EU** of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (hereinafter: **CSMAD** or 2014/57/EU);
- Directive **2014/65/EU**<sup>92</sup> of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (hereinafter **MiFID II** or 2014/65/EU);
  - Directive (EU) **2016/1034** of the European Parliament and of the Council of 23 June 2016 amending Directive 2014/65/EU on markets in financial instruments (hereinafter: 2016/1034);

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<sup>92</sup> See also Regulations 2017/953, 2017/980, 2017/981, 2017/1005, 2017/1110 and 2017/1111 and Delegated Regulations 2017/566, 2017/568, 2017/569, 2017/570, 2017/571, 2017/573, 2017/574, 2017/575, 2017/576, 2017/578, 2017/584, 2017/586, 2017/589, 2017/591, 2017/592.

- Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

- These Directives have been transposed into Belgian law in the:

- Law of 2 August 2002<sup>93</sup> on the supervision of the financial sector and financial services (hereinafter: **the Financial Law**),
- Law of 29/04/1999 on the organisation of the electricity market (hereinafter: **the electricity law**) and,
- Law of 12/04/1965 on the transport of gaseous and other products by pipeline (hereinafter: **the gas law**),

In particular, the above-mentioned Directives have been transposed into the Financial Law, while the electricity and gas laws include various references/provisions of the above-mentioned Regulations and Directives.

84. Figure 8 shows the timeline of the main legislative texts governing matters relating to Financial Instruments which concern REMIT to varying degrees.

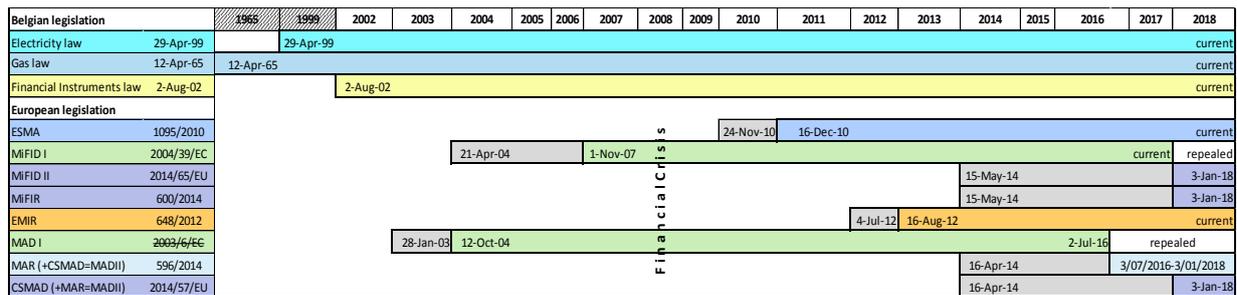


Figure 8: Financial instruments: timeline of the implementation of European Regulations & Directives and Belgian laws (on the left: date of publication, on the right: status either in progress, or repealed, or date of implementation)

Source: CREG

<sup>93</sup> Given the use of the term transparency throughout this study, it is important to stress that the "Transparency Directive" and the "Transparency Law" are not directly part of our scope of analysis. Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, is referred to as the **Transparency Directive**. Commission Directive 2007/14/EC of 8 March 2007 laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, was transposed into Belgian law by the Law of 2 May 2007 (referred to as the **Transparency Law**) on the disclosure of significant holdings in issuers whose shares are admitted to trading on a regulated market, and containing various provisions, by various articles of the **Law of 2 August 2002** on the supervision of the financial sector and financial services, and finally, by the Royal Decree of 14 November 2007 on the obligations of issuers of financial instruments admitted to trading on a regulated market, and the Royal Decree of 14 February 2008 on the disclosure of significant shareholdings. Directive 2013/50/EU of the European Parliament and Council of 22 October 2013 amends Directive 2004/109/EC. The Law of 27 June 2016 partially transposes several European Directives, including Directive 2013/50/EU of 22 October 2013, and also implements part of the Market Abuse Regulation (596/2014). As such, it amends several existing Belgian laws, including the Prospectus Law and the Transparency Law.

#### 1.4.2. The economic and financial crisis of 2008

85. The crisis of 2008 shook the economic and financial world. As regards European legislation, we can talk of 'pre 2008' and 'post 2008'.

- MiFID I will be replaced by MiFID II and MIFIR, both of which will enter into force on 3 January 2018;
- MAD I is/will be replaced by MAD II which includes Regulation 596/2014 (MAR) and Directive 2014/57/EU (CSMAD) which will both be fully implemented on 3 January 2018. However, MAD I has already been repealed and replaced by MAR since 3 July 2016, with the exception of a few articles listed in Article 39 of Regulation 596/2014.

86. The reasons for changes in the legislation relative to Financial Instruments

The 2008 financial crisis not only impacted the global economy, but also, and more importantly, confidence in financial markets. The European Union identified weaknesses and drew conclusions by amending and strengthening its legislation.

Among the problems identified and solutions given:

- the lack of confidence in market integrity needed to be reduced by a legislative strengthening of market abuse legislation through the MAR Regulation and the CSMAD Directive;
- insufficient information allowing regulators to better monitor and understand derivatives markets needed to be addressed by the obligation to report derivative transactions<sup>94</sup> to databases in accordance with the EMIR Regulation;
- derivative instruments between financial institutions that may lead to systemic risk in the market needed to be cleared, according to the EMIR Regulation;
- the manipulation of certain benchmarks, such as LIBOR, needed to be regulated, in order to increase confidence in benchmarks;
- insufficient bank capital, making banks vulnerable to crises, has been subject to stricter requirements since 2014, not only by the application of Basel III<sup>95</sup> but also by the CRD IV Directive<sup>96</sup>.

#### 1.4.3. MiFID I and MiFID II

87. MiFID, also known as MiFID I<sup>97</sup>, aims to strengthen the integration, competitiveness and efficiency of the European Union's financial markets by encouraging competition between trading

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<sup>94</sup>defined in Article 2, 47° of the electricity law: (translation) "*Derivative instrument on electricity*": a Financial Instrument covered by the provisions implementing Annex I, Section C, points 5, 6 and 7 of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in Financial Instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC where that instrument concerns electricity.

<sup>95</sup>The Basel III Accords aim to strengthen the financial system following the *subprime crisis*.

<sup>96</sup> Capital Requirements Directive, or **CRD**. Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

<sup>97</sup>Markets in Financial Instruments Directive 2004/39/EC or MiFID (Markets in Financial Instruments Directive) also incorporates the Implementing Directive 2006/73/EC and the Commission Implementing Regulation (EC) No 1287/2006 of 10

platforms and guaranteeing protection for investors active in Financial Instruments, including equities, bonds, derivatives and structured products. MiFID applies to authorised regulated markets and multilateral trading systems. MiFID I, transposed into the law of 2 August 2002 on the supervision of the financial sector and financial services, will remain in force until the entry into force of MiFID II on **3 January 2018**.

88. The **MiFID II**<sup>98</sup> Directive and the **MiFIR** Regulation, collectively referred to as **MiFID II**, cover markets for Financial Instruments, investment brokers and trading platforms. The new framework will strengthen and replace the current MiFID framework (2004/39/EC) **from 3 January 2018**<sup>98 99</sup>. The main objective is to ensure a level playing field<sup>100</sup> in financial markets and to ensure that they serve the economy by supporting jobs and growth.<sup>101</sup>

*MiFID II*<sup>102</sup>, which Member States are obliged to transpose [...] <sup>98</sup> increases the number of financial instruments covered by trading rules and makes the use of regulated platforms mandatory for certain transactions. It introduces rules on high-frequency trading. It improves the transparency and supervision of financial markets, including derivatives markets, and addresses the issue of price volatility of commodity derivatives. The new framework improves the competitive environment for trading and clearing financial instruments. Building on existing rules, the revised MiFID rules also strengthen investor protection by introducing strict organisational and good conduct requirements.

Compared to MiFID I, MiFID II changes the rules on authorisation and organisational requirements for investment service providers and investor protection. In addition, MiFID II applies to Organised Trading Facilities (OTF) and lays down minimum requirements in terms of sanctions.

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August 2006 implementing Directive 2004/39/EC of the European Parliament and of the Council as regards record-keeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive.

<sup>98</sup> Directive 2014/65/EU and the following delegated acts:

- Directive (EU) 2016/1034 of the European Parliament and of the Council of 23 June 2016 amending Directive 2014/65/EU on markets in financial instruments;
- Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

*Under the MiFID/MiFIR Regulation, the Commission has the possibility to adopt Regulatory and Implementing Technical Standards (RTS and ITS) to further clarify how certain provisions will work in practice. These standards only cover technical issues and are adopted by the Commission on the basis of opinions provided by the European Securities and Markets Authority (ESMA) (Source: [http://ec.europa.eu/finance/securities/isd/mifid2/index\\_en.htm](http://ec.europa.eu/finance/securities/isd/mifid2/index_en.htm)).*

<sup>99</sup> See Directive (EU) 2016/1034 of 23 June 2016. The deadline for Member States to apply the measures transposing Directive 2014/65/EU was originally scheduled for January 2017. This postponement is due in particular to the difficulties encountered in implementing the Financial Instrument Reference Database (FIRDS) needed to enforce MiFID II rules.

Article 93 (1), as amended, of EU Directive 2014/65/EC on transposition stipulates in particular that:

- *Member States shall adopt and publish, by 3 July 2016, the laws, regulations and administrative provisions necessary to comply with this Directive. [...]*
- *Members States shall apply those measures from 3 January 2018 except for the provisions transposing Article 65(2) which shall apply from 3 September 2019 [...].*

<sup>100</sup> Making financial markets more efficient, resilient and transparent and strengthening investor protection.

<sup>101</sup> Explanatory memorandum to Commission Delegated Regulation (EU)... /... of 18 May 2016 supplementing Regulation (EU) No 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions.

<sup>102</sup> <http://eur-lex.europa.eu/legal-content/FR/TXT/?uri=CELEX:52016PC0056>.

Specifically,

- a new investment service, OTF (Organised Trading Facilities) is recognised;
- emissions allowances are explicitly defined as Financial Instruments (Annex I, Section C, 11) - see also paragraph 79.

#### 1.4.4. EMIR

89. The EMIR Regulation<sup>103</sup>, which came into force on 16 August 2012, aims to increase transparency in OTC markets and make them safer. This Regulation applies to OTC derivatives, central counterparties<sup>82</sup> and trade repositories<sup>81</sup>.

The areas covered by EMIR concern in particular:

- the obligation to clear<sup>104</sup> and apply risk mitigation techniques for all transactions in OTC derivatives where they are not executed on a regulated market;
- the provisions applicable to central counterparties for all Financial Instruments;
- reporting to trade repositories for any derivative contract, whether over-the-counter (OTC) or traded on a regulated market.

The obligations differ according to the type of counterparty:

- financial counterparties<sup>105</sup> and non-financial counterparties<sup>106</sup> above a threshold must:
  - report their derivatives transactions to a <sup>107</sup>Trade Repository, which forwards them to ESMA and the national competent authority (NCA);
  - submit their transactions to a central counterparty<sup>108</sup> (CCP) for clearing;

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<sup>103</sup> *European Markets Infrastructure Regulation*. Regulation (EU) No **648/2012** of the European Parliament and of the Council of 4 July 2012 (application 16 August 2012) on OTC derivatives, central counterparties and trade repositories, has been supplemented by

- technical standards, published in the Official Journal of the European Union on 23 February 2013 and entered into force on 15 March 2013 (<http://eur-lex.europa.eu/legal-content/FR/ALL/?uri=OJ:L:2013:052:TOC>),
- Implementing Regulations (EU) 1247/2012, 1248/2012 and 1249/2012 of 19 December 2012.

[http://ec.europa.eu/internal\\_market/financial-markets/docs/derivatives/emir-faqs\\_en.pdf](http://ec.europa.eu/internal_market/financial-markets/docs/derivatives/emir-faqs_en.pdf).

<sup>104</sup> *the process of establishing positions, including the calculation of net obligations, and ensuring that financial instruments, cash, or both, are available to secure the exposures arising from those positions*" (Article 2 (3) of Regulation 648/2012).

<sup>105</sup> FC : *Financial Counterparty, namely "an investment firm authorised in accordance with Directive 2004/39/EC, a credit institution authorised in accordance with Directive 2006/48/EC, an insurance undertaking authorised in accordance with Directive 73/239/EEC, an assurance undertaking authorised in accordance with Directive 2002/83/EC, a reinsurance undertaking authorised in accordance with Directive 2005/68/EC, a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU"* (Article 2 (8) of Regulation 648/2012).

<sup>106</sup> *NFC: Non-Financial Counterparty, "an undertaking established in the Union other than the entities referred to in points (1) and (8) [of Regulation 648/2012]"*; See also FSMA communication for non-financial counterparties at <http://www.fsma.be/fr/Search.aspx?q=EMIR%20counterparts%20non%20financi%c3%a8res>.

<sup>107</sup> Article 2 (2) of Regulation 648/2012: *"a legal person that centrally collects and maintains the records of derivatives"*.

<sup>108</sup> Article 2 (1) of Regulation 648/2012: *"a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer"*. A central counterparty (CCP) clears transactions between two parties, helping to manage the risk of default. Require clearing by a central counterparty for certain categories of interest rate derivative contracts, or interest rate swaps, ensure that financial

- apply *risk mitigation* techniques for uncleared OTC derivatives.
- transactions made for hedging purposes are exempt from EMIR;
- rules of conduct and prudential standards are provided for *Trade Repositories* (TR) and central counterparties.

Both the European Commission<sup>109</sup> and ESMA<sup>110</sup> publish Q&As on their websites in order to resolve the problems related to the application of EMIR pragmatically.

90. Regulation **600/2014** MiFIR amends EMIR for greater transparency by expanding:

- Technical standards, particularly in terms of reporting and clearing;
- *Ante* and *post-trade* transparency;
- The field of the instruments.

The MiFIR Regulation covers the organisation of markets, access to the European market by companies from third countries, and the powers of supervisory authorities, aiming to improve transparency and competition in commercial activities by limiting the use of exemptions from reporting obligations and providing non-discriminatory access to trading venues and central counterparties for all Financial Instruments and derivatives which must be traded in organised venues.

The **MIF II (MiFID II and MiFIR)** package will enter into force on **3 January 2018**.

#### 1.4.5. **MAD I and MAD II (= MAR + CSMAD)**

91. **MAD<sup>111</sup>**, also known as **MAD I** and transposed since 2004, pursued the objective of ensuring the integrity of European financial markets and increasing investor confidence by preventing market abuse within EU financial markets, by:

- providing that Member States should guarantee "effective, proportionate and dissuasive" administrative sanctions (Article 14 (1)) and civil-law compensation mechanisms for market abuse;
- giving the regulator investigatory powers (Article 12 (1)).

MAD I was repealed on 2 July 2016.

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markets are more stable and less risky. The result is a more favourable environment for investment and economic growth within the Union (source: [http://europa.eu/rapid/press-release\\_IP-15-5459\\_en.htm?local=en](http://europa.eu/rapid/press-release_IP-15-5459_en.htm?local=en)).

<sup>109</sup> [http://ec.europa.eu/finance/financial-markets/derivatives/index\\_en.htm](http://ec.europa.eu/finance/financial-markets/derivatives/index_en.htm).

<sup>110</sup> <https://www.esma.europa.eu/press-news/esma-news/esma-updates-its-emir-qa>.

<sup>111</sup> *Market Abuse Directive* - Directive **2003/6/EC** of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation, as amended by Directives 2008/26/EC and 2010/78/EU (see also: <https://www.esma.europa.eu/regulation/trading/market-abuse>).

## From MAD I to MAD II (= MAR + CSMAD)<sup>112</sup>

92. Regulation 596/2014<sup>113</sup> (MAR) and Directive 2014/57/EU<sup>114</sup> (CSMAD) together replace Directive 2003/6/EC (MAD I) under the name MAD II. They will be fully applicable from 3 January 2018 onwards, although MAR is already in force since 3 July 2016, with the exception of a few articles<sup>115</sup>.

**MAR** aims to strengthen market integrity and investor protection. MAR strengthens the existing MAD framework by extending its scope to new markets and trading strategies, and introducing new requirements. The concept of market abuse covers insider trading, the illicit disclosure of inside information and market manipulation, as well as attempted insider trading and market manipulation.

**CSMAD**<sup>116</sup> supplements MAR as regards the harmonisation of sanctions for market manipulation and insider trading within the Member States. Article 1 (1) states that "*This Directive establishes minimum rules for criminal sanctions for insider dealing, for unlawful disclosure of inside information and for market manipulation to ensure the integrity of financial markets in the Union and to enhance investor protection and confidence in those markets*".

93. MAD II extends the scope of MAD I to new entities and Financial Instruments<sup>117</sup>; MAD II applies in particular to:

- Financial Instruments traded on a regulated market, on an MTF or an OTF<sup>118</sup>, and any other type of behaviour or action likely to have an effect on a Financial Instrument, regardless of whether or not it takes place on a trading platform;
- Financial instruments for which an application for admission to trading on an MTF has been submitted;
- Commodity markets<sup>119</sup>, OTC transactions and derivatives and commodity spot contracts that may influence the prices of Financial Instruments as well as cross-market abuse.

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<sup>112</sup> [https://www.febelfin.be/sites/default/files/files/ws01\\_mar\\_csmad\\_be\\_compliance\\_day\\_20160607\\_raptis.pdf](https://www.febelfin.be/sites/default/files/files/ws01_mar_csmad_be_compliance_day_20160607_raptis.pdf).

<sup>113</sup> Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (Market Abuse Regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC. See also Commission Implementing Directive (EU) 2015/2392 of 17 December 2015 relating to Commission Regulation (EU) No 596/2014 of the European Parliament and of the Council as regards reporting to competent authorities of actual or potential infringements of that Regulation and Commission Regulation (EU) No 2016/909 of 1 March 2016 supplementing Regulation (EU) No 596/2014 of the Parliament and of the Council with regard to regulatory technical standards for the content of notifications to be submitted to competent authorities and the compilation, publication and maintenance of the list of notifications.

<sup>114</sup> Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (Market Abuse Directive), entered into force on 3 July 2016.

<sup>115</sup> In particular Articles 4 (2) and 4 (3).

<sup>116</sup> Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (Market Abuse Directive), entered into force on 3 July 2016.

<sup>117</sup> See the FSMA website for more information at:

[http://www.fsma.be/fr/Site/Repository/press/div/2016/2016-05-18\\_mar.aspx](http://www.fsma.be/fr/Site/Repository/press/div/2016/2016-05-18_mar.aspx).

<sup>118</sup> See article 2, (21) to (24), of Directive 2014/65/EU (MiFID II): RM (Regulated Market) - MTF (Multilateral Trading Facilities): - OTF (Organised Trading Facilities): – in conjunction with article 2 (4), of the Implementing Regulation 1348/2014 (IA REMIT): OMP (Organised Market Place).

<sup>119</sup> Commodity refers to any fungible good that can be supplied, including metals and their minerals and alloys, agricultural products and energy supplies, such as electricity (article 2 (1), of Regulation (EC) n° 1287/2006).

In addition,

- MAD II will apply to transactions negotiated on OTFs as soon as MiFID II comes into force, unless they are exempted from qualification as a Financial Instrument;
- more investigative powers are given to regulators and the strengthening of their cooperation (ESMA, ACER, NRAs, etc.) is specified;
- sanctioning powers are specified;
- additional criminal sanctions for more serious market abuse are provided for. MAR provides for administrative sanctions while CSMAD provides for criminal sanctions;
- a specific arrangement for whistleblowers is introduced;
- a specific definition of inside information for derivatives that are wholesale energy products is introduced.

#### 1.4.6. Other Regulations and Directives<sup>120</sup>

94. The 'CRD IV'<sup>96</sup> Directive and the CRR Regulation<sup>121</sup> define the supervision and prudential requirements applicable to credit institutions and investment firms, in particular as regards authorisation, governance, liquidity standards or capital requirements.

95. The Regulation on indices used as benchmarks in financial instruments<sup>122</sup>, in force from 1 January 2018, establishes a common framework to ensure the accuracy and integrity of indices used as benchmarks in financial instruments and contracts, or to measure the performance of investment funds in the Union (Article 1).

#### 1.4.7. The regulation of wholesale energy products<sup>123</sup>

96. REMIT takes into account certain aspects of the Financial Regulation. As such, Articles 4 (obligation to disclose inside information), 8 (data collection<sup>124</sup>) and 9 (registration of market participants) of Regulation 1227/2011 apply to wholesale energy products that are considered as Financial Instruments. However, Article 1 (2) of Regulation 1227/2011 stipulates that Articles 3 (prohibition of insider dealing) and 5 (prohibition of market manipulation) of REMIT do not apply to wholesale energy products which are Financial Instruments if they fall within the scope of MAR.

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<sup>120</sup> not directly applicable to the energy sector.

<sup>121</sup> Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012 (EMIR).

<sup>122</sup> Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks for financial instruments and contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014 (MAR).

<sup>123</sup> See paragraph 56 and section 3.2. of "Guidance on the application of Regulation (EU) N° 1227/2011 of the European Parliament and the Council of 25 October 2011 on wholesale energy market integrity and transparency".

<sup>124</sup> In order to avoid double reporting in respect of these transactions, recital 6 and Article 6 (5) of 1348/2014 and Article 8 (3) of 1227/2011 provide that if the actor has fulfilled its obligations under EMIR, its obligations to report its transactions to REMIT are fulfilled; however, this is not the case in the opposite situation given that the requirements for Financial Instruments are higher than those of REMIT. As regards reporting obligations, REMIT states in Article 8 that *Market participants, or a person or authority listed in points (b) to (f) of paragraph 4 on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade*, while EMIR (Article 9) and MiFIR (Article 26) stipulate that only transactions are covered.

## Definitions of Financial Instruments and "Other Derivative Financial Instruments".

97. Article 4 (17) of MiFID I defines Financial Instruments as those listed in Section C of Annex I. Among 10 Financial Instruments, 4 may correspond to wholesale energy products, namely Instruments C5, C6, C7 and C10. MiFID II, which will enter into force on 3 January 2018<sup>125</sup>, has amended<sup>126</sup> (shaded amendments in the footnote) their title but has also added an additional category C11.

*C5. Options, futures, swaps, forward rate agreements and any other **derivative contracts relating to commodities** that must be settled in cash or may **be settled in cash** at the option of one of the parties (otherwise than by reason of a default or other termination event).*

*C6. Options, futures, swaps, and any other **derivative contract relating to commodities** that can be physically settled provided that they are traded on a regulated market and/or an MTF.*

*C7. Options, futures, swaps, forwards and any other **derivative contracts relating to commodities**, that can be **physically settled** not otherwise mentioned in C.6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls.*

*C10. Options, futures, swaps, forward rate agreements and any other **derivative contracts relating to climatic variables**, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may **be settled in cash** at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded*

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<sup>125</sup> The amended Article 95 (1) of Directive 2014/65/EU provides for the following transitional provisions until 3 July 2021:

- a) the clearing obligation set out in Article 4 of Regulation (EU) N° 648/2012 and the risk mitigation techniques set out in Article 11 (3) thereof shall not apply to C6 energy derivative contracts entered into by non-financial counterparties that meet the conditions in Article 10 (1) of Regulation (EU) N° 648/2012 or by non-financial counterparties that shall be authorised for the first time as investment firms as from 3 January 2018; and
- b) such C6 energy derivative contracts shall not be considered to be OTC derivative contracts for the purposes of the clearing threshold set out in Article 10 of Regulation (EU) N° 648/2012.

C6 energy derivative contracts benefiting from the transitional regime set out in the first subparagraph shall be subject to all other requirements laid down in Regulation (EU) N° 648/2012.

<sup>126</sup> C5. Options, futures, swaps, (...) forwards, and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event.  
C6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market, a MTF, or an OTF, except for wholesale energy products traded on an OTF that must be physically settled;

C7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities, that can be physically settled not otherwise mentioned in point 6 of this Section and not being for commercial purposes, which have the characteristics of other derivative financial instruments;

C10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates (...) or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties other than by reason of default or other termination event, as well as any other derivative contracts relating to assets, rights, obligations, indices and measures not otherwise mentioned in this Section, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market, OTF, or an MTF; (...)

C11. Emission allowances consisting of any units recognised for compliance with the requirements of Directive 2003/87/EC (Emissions Trading Scheme).

*on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls.*

98. Regulation 1287/2006 provides additional definitions. Article 37 for derivatives and Article 38 specifies the "characteristics of other derivative financial instruments".

99. Derivative contracts relating to commodities are considered as Financial Instruments:

- if they must be settled in cash or can be settled in cash (C5 and C10);
- if they can be physically settled and are traded on a RM or MTF<sup>127</sup> (C6 and C7);
- if they present the characteristics of "other derivative financial instruments" (C7) as specified in article 38 (1). However, Article 38 (4) stipulates that "a contract shall be considered to be for commercial purposes for the purposes of Section C(7) of Annex I to Directive 2004/39/EC, and as not having the characteristics of other derivative financial instruments for the purposes of Sections C(7) and (10) of that Annex, if it is entered into with or by an operator or administrator of an energy transmission grid, energy balancing mechanism or pipeline network, and it is necessary to keep in balance the supplies and uses of energy at a given time";
- if the characteristics are similar to those used for C6-type contracts, but for third countries;
- if derivative contracts relating to climatic variables, or emission allowances, must or may be settled in cash and if traded on a RM or MTF, they are also defined as Financial Instruments (C10) (see Articles 38 (3) and 39).

100. As defined in Article 38 (2) of 1287/2006, spot contracts<sup>128</sup> for gas and electricity are not listed as Financial Instruments in Annex I, Section C of MiFID I and II.

### **Changes introduced by MiFID II**

As of 3 January 2018, MiFID II will introduce several important changes relating to:

- the scope of the Financial Regulation;
- the definitions of certain Financial Instruments and exceptions specific to REMIT.

101. MiFID II extends<sup>129</sup> the scope of financial regulation to include OTFs<sup>130</sup> (*Organised Trading Facilities*)<sup>131</sup> which must be licensed on the same basis as RMs and MTFs<sup>132</sup>. What makes a distinction between OTFs on the one hand, and RM and MTFs on the other hand, is the execution of orders. In an

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<sup>127</sup> The definitions set out in Article 4 (14) and (15) of Directive 2004/39/EC (MiFID) make it possible to determine whether or not a contract is traded on a regulated market (RM) or on a multilateral trading facility (MTF). The "non-discretionary" character is crucial in qualifying RMs and MTFs, since contracts traded on a discretionary basis are not consequently classified as Financial Instruments (see Article 20 (6) of Directive 2014/65/EU (MiFID II)).

<sup>128</sup> See the definition of a *spot contract* in article 7 (2) of Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

<sup>129</sup> Article 2 of Directive 2014/65/EU includes a range of exemptions for companies and persons for which the Directive does not apply, with the exception of Articles 57 and 58 (Article 1 (6)).

<sup>130</sup> with the exception of those already covered by Regulation (EU) No. 1227/2011 (see recital 9 of Directive 2014/65/EU).

<sup>131</sup> Article 4 (23) of Directive 2014/65/EU.

<sup>132</sup> Article 4 (21) and (22) of Directive 2014/65/EU.

OTF<sup>133</sup>, the operator - who should be neutral<sup>134</sup> - places *bids* and *offers* and *matching orders* in a discretionary manner (article 20) whereas for RMs and MTFs, the trades are executed in a non-discretionary manner (article 19). Through OTFs, MiFID II introduces new mechanisms to ensure that a maximum number of OTC and derivative transactions can be executed.

102. In relation to MiFID I, MiFID II specifies and/or supplements the definitions of Financial Instruments:

- Article 4 (15) of Directive 2014/65/EU defines Financial Instruments as the instruments referred to in Section C of Annex I;
- wholesale energy products are covered by categories C5, C6, C7<sup>135</sup>, C10<sup>136 137</sup> and C11 (see also paragraph 98);
- a (new) specific category refers to emission allowances (C11)<sup>127 138</sup>;
- a "REMIT carve-out" for wholesale energy products traded on new OTF platforms that must be physically settled in accordance with the C6 definition. As such, these energy products fall exclusively under the REMIT regulation. All other Financial Instruments defined under category C6 and traded on RM, MTF and OTF platforms remain under the regulatory regime of the MiFID, MAR and EMIR package.

103. Recital 3 of the Delegated Regulation<sup>139</sup> includes the Commission's reasoning on this exclusion (REMIT *carve-out*) while Article 5 (1) of the same Delegated Regulation sets out the criteria for wholesale energy products<sup>140</sup> that must be physically settled, thereby avoiding financial regulation:

*For the purposes of Section C(6) of Annex I to Directive 2014/65/EU, a wholesale energy product must be physically settled where all the following conditions are satisfied:*

*(a) it contains provisions which ensure that parties to the contract have proportionate arrangements in place to be able to make or take delivery of the underlying commodity; a balancing agreement with the Transmission System Operator in the area of electricity and gas shall be considered a proportionate arrangement where the parties to the agreement have to ensure physical delivery of electricity or gas;*

*(b) it establishes unconditional, unrestricted and enforceable obligations of the parties to the contract to deliver and take delivery of the underlying commodity;*

*(c) it does not allow either party to replace physical delivery with cash settlement;*

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<sup>133</sup> The OTFs include all organised forms (system/platform) of execution and trading which are different from RMs and MTFs.

<sup>134</sup> The platform operator should remain neutral in the sense that he or she should not be able to either execute transactions between buyers and sellers, nor commit their equity capital as a counterparty.

<sup>135</sup> Article 7 of the Delegated Regulation lays down the characteristics of Derivative Financial Instruments for categories C7 and C10.

<sup>136</sup> Articles 7 and 8 of the Delegated Regulation lay down the characteristics of Derivative Financial Instruments for categories C7 and C10.

<sup>137</sup> Article 8 (c) provides that transmission rights related to electricity transmission cross zonal capacities when they are, on the primary market, entered into with or by a transmission system operator or any persons acting as service providers on their behalf and in order to allocate the transmission capacity, are expressly excluded from the definition of C10 instruments.

<sup>138</sup> Emissions allowances are not defined as wholesale energy products within the meaning of REMIT (see paragraph 79).

<sup>139</sup> Commission Delegated Regulation (EU) 2017/565 of 25 April 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive.

<sup>140</sup> Article 6 (3) of the Delegated Regulation refers to Article 2 (4) of Regulation 1227/2011 (REMIT) for the definition of wholesale energy products.

(d) the obligations under the contract cannot be offset against obligations from other contracts between the parties concerned, without prejudice to the rights of the parties to the contract, to net their cash payment obligations.

For the purposes of point (d), operational netting in power and gas markets shall not be considered as offsetting of obligations under a contract against obligations from other contracts.

104. MiFID II specifies categories C5, C7 and C10, introduces the REMIT 'carve-out' for category C6 (derivative contracts relating to commodities that can be physically settled, traded on a Regulated Market, MTF or OTF) and a specific category for emissions allowances (C11). The links between REMIT and the Financial Instruments are illustrated in the figure below.

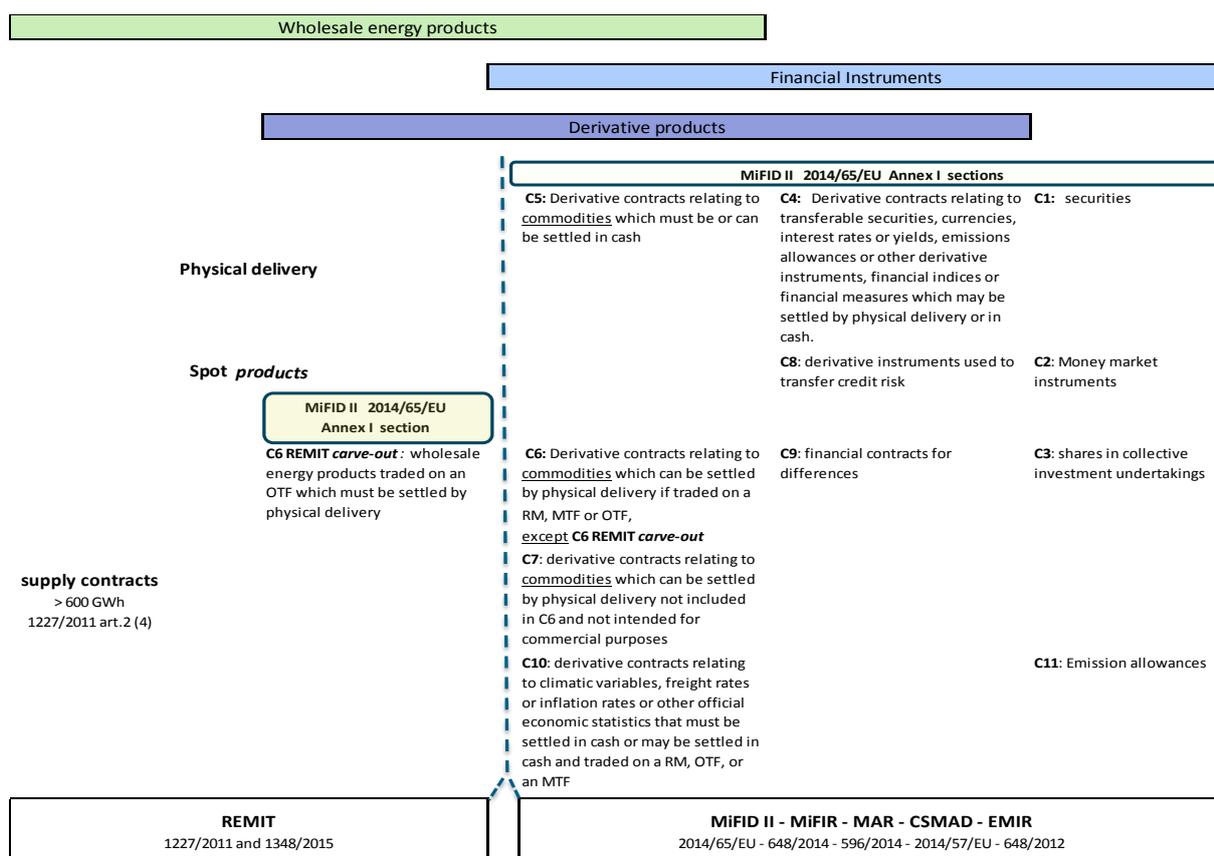


Figure 9: regulation of wholesale energy products and Financial Instruments<sup>126</sup>

Source: CREG

In the context of market abuse, a wholesale energy product falls under either the REMIT Regulation or the Financial Instruments Regulation, depending in particular on its maturity and trading venue. REMIT applies to wholesale energy products which are qualified as Financial Instruments (C5 to C7 and C10) as regards Articles 4 (obligation to disclose inside information), 8<sup>141</sup> (data collection) and 9 (registration of market participants). While the Financial Regulations apply to the prohibition of insider trading and market manipulation, as well as attempted insider trading and market manipulation.

<sup>141</sup> If a market participant has reported transaction data in accordance with the provisions of article 26 of Regulation (EU) n° 600/2014 (MiFIR) or article 9 of Regulation (EU) n° 648/2012 (EMIR), its reporting obligations in accordance with the terms of article 8, paragraph 1, of Regulation (EU) n° 1227/2011 (REMIT) are deemed to be fulfilled. See also footnote <sup>124</sup>.

## 2. AUTHORITIES

### 2.1. THE COMPETENT AUTHORITIES OF THE ELECTRICITY AND NATURAL GAS MARKETS

105. The CREG<sup>142</sup> is the federal regulator for the Belgian electricity and gas markets. Its responsibilities include supervising transparency and competition on the electricity and natural gas markets. In this context, the CREG collaborates, in a precise legal context, not only with the regional regulators but also with various other competent authorities. All of these authorities have their own legal environment and are, directly or indirectly, in contact and/or under the supervision of European authorities. The diagram below shows a simplified representation of this.

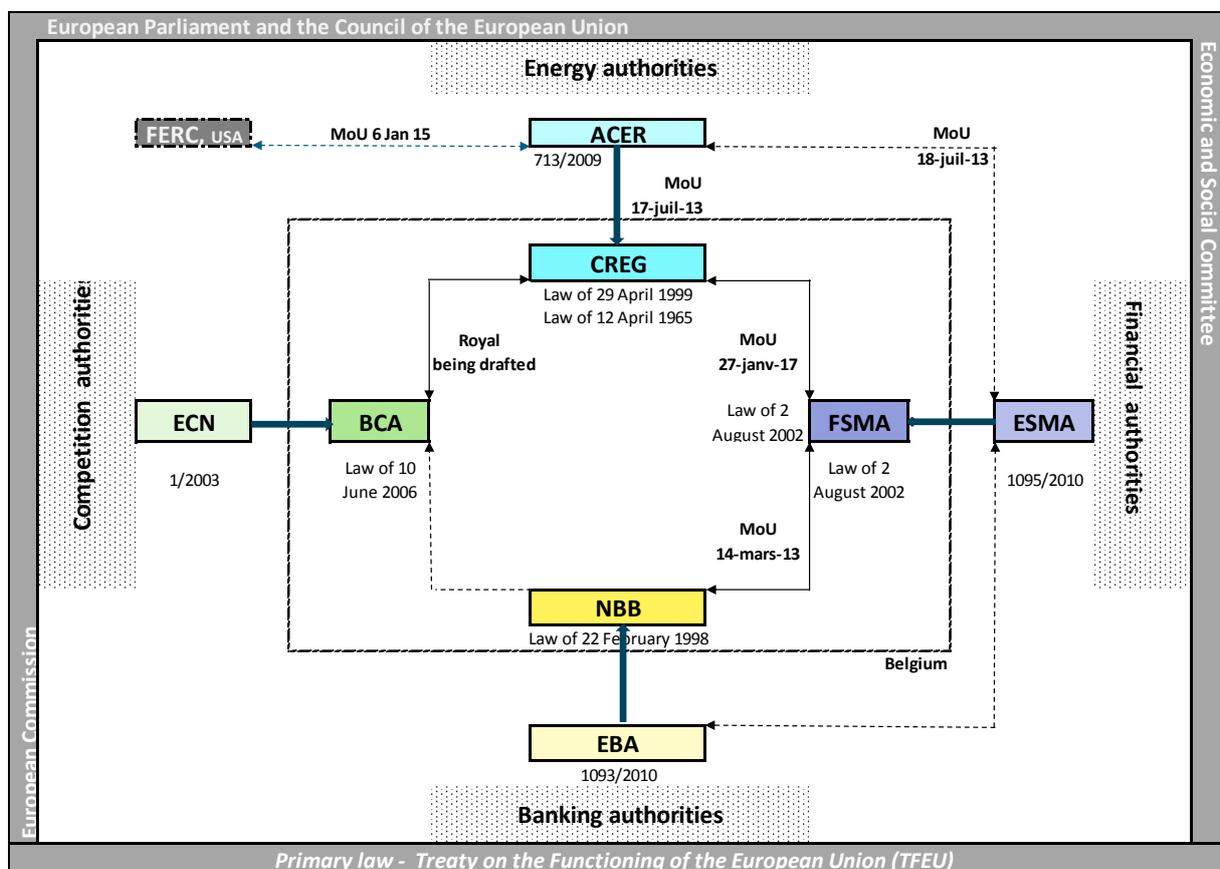


Figure 10: The main authorities present on the energy markets

Source: CREG

106. The four authorities shown in the chart above have their own specific elements, but given the particularities of the gas and electricity markets, the four authorities<sup>143</sup> may be called upon at a given moment to play a significant role, depending on the issue at hand. In the following paragraphs, a brief overview of each authority and their possible interrelationships will be given.

<sup>142</sup> <http://www.creg.be/fr/a-propos-de-la-creg>.

<sup>143</sup> Other authorities may be involved in energy markets, but the study was limited to energy authorities, financial authorities, banking authorities and competition authorities.

107. The legislation specific to each authority is listed in Table 8 below. The table includes the laws and Regulations (dark grey), but also the *Memorandums of Understanding* (MoU) and the (reciprocal) references between the laws and regulations (light grey) relative to each authority. For example, besides the MoU of 17 July 2013 between ACER and the NRAs, the electricity law of 29 April 1999 refers inter alia to Regulation 713/2009 and/or ACER<sup>144</sup>.

reading direction ←	ACER	CREG	ESMA	FSMA	BCA	ECN	NBB	EBA
ACER	713/2009	MoU 20130717	MoU 20130718					
CREG electricity	MoU 20130717	Law of 29 April 1999		MoU 20170127				
CREG gas	MoU 20130717	Law of 12 April 1965						
ESMA	MoU 20130718		1095/2010					
FSMA		MoU 20170127		Law of 2 August 2002			MoU 20130314	
BCA					Law of 10 June 2006			
ECN						1/2003		
NBB				MoU 20130314			Law of 22 February 1998	
EBA								1093/2010

Table 8: Laws, Regulations and *Memorandums of Understanding* governing the authorities active on the energy markets  
Source: CREG

108. As regards supervision of market participants, the CREG must ensure that the regulations and laws in force are complied with by the primary data owners, TSOs and data providers. The Agency for the Cooperation of Energy Regulators (hereinafter: the Agency or ACER) and the European Commission are responsible for monitoring the 2 transparency platforms ENTSO-E and ENTSO-G.

### The European energy authorities

#### The European Commission

109. *The European Commission works in the general interest of the EU, of which it is the executive body*<sup>145</sup>, while the *DG ENER develops and implements Commission policy in the area of energy*<sup>146</sup>.

On 18 July 2014, DG ENER wrote to the CREG informing it of its analysis of the reporting obligations of Fluxys vis-à-vis ENTSO-G, in accordance with the prescriptions of 715/2009. According to Decision 2012/490/EU, the TSOs were obliged to provide all data required by 1 October 2013. By analysing the specific data of Fluxys Belgium sa/nv, DG ENER had identified shortcomings for a number of data. Consequently, the CREG was invited to take measures to ensure that the TSOs were *fully compliant*.

On 13 August 2014, Fluxys Belgium replied to the CREG's letter of 30 July 2014, in which it informed Fluxys of DG ENER's findings, explaining the measures taken to correct the data pointed out by DG ENER and the reasons for the discrepancies observed.

The new ENTSO-G platform of 1 October 2014 resolved various problems identified by DG ENER.

The CREG met informally with Fluxys on 2 September 2014 and 29 October 2014; from this last meeting, it appears that, as of 1 October 2014, corrections to the problems raised by DG ENER have been made satisfactorily.

<sup>144</sup> In particular, Articles 2, 24<sup>o</sup> quater; 8, §1bis, last paragraph; 10, §2 quater, 9th paragraph; 23, §1, 1<sup>o</sup>, and 36<sup>o</sup>, and §3bis; 23 quater §1 to §3.

<sup>145</sup> [https://ec.europa.eu/commission/index\\_fr](https://ec.europa.eu/commission/index_fr).

<sup>146</sup> [https://ec.europa.eu/info/departments/energy\\_fr](https://ec.europa.eu/info/departments/energy_fr).

## ACER<sup>147</sup>

110. The Agency for the Cooperation of Energy Regulators was created as part of the Third Package on the liberalisation of the energy sector (electricity and natural gas), a set of Directives<sup>148</sup> and Regulations<sup>149</sup> that came into force in 2011. Regulation (EC) No 713/2009<sup>150</sup> of the European Parliament and of the Council of 13 July 2009 established an Agency for the Cooperation of Energy Regulators as a Community body with legal personality. Its responsibilities were extended in 2011 under REMIT (Regulation No. 1227/2011) and in 2013 under the guidelines for trans-European energy infrastructure (Regulation No. 347/2013).

The Agency is working towards the creation of a transparent, secure, sustainable and competitive internal energy market for the benefit of all EU consumers. ACER's general mission is to assist national regulatory authorities in the area of energy in the exercise of their functions at the EU level and, if necessary, to coordinate their actions. ACER cooperates with EU institutions and stakeholders, including the national regulatory authorities and the European Networks of Transmission System Operators (ENTSOs), with the aim of developing a single energy market in Europe.

ACER's activities are structured around three main areas:

- Support for the development of regional initiatives and common rules: ACER supervises regional cooperation between TSOs, participates in the development of electricity and gas network codes at the EU level, in accordance with the framework guidelines, it supplements and coordinates the work of the national regulatory authorities, and also coordinates regional initiatives that promote greater market integration;
- Energy infrastructure: ACER issues opinions on the ENTSO-E and ENTSO-G 10-year plans regarding the development of networks to ensure that they are in line with EU priorities, and takes, in certain circumstances, individual binding decisions on the terms of access and operational security of cross-border infrastructure;
- Energy market monitoring: ACER has a general mission in terms of monitoring the internal electricity and gas markets and since 2011 a special responsibility to monitor wholesale energy markets (REMIT) in order to detect and prevent market abuse.

## Checks

111. In collaboration with ENTSO-E, ACER carried out, in 2015 and 2016, checks on the data that the TSOs were obliged to transmit to ENTSO-E in accordance with Regulations 714/2009 and 543/2013. This check covered the six categories of data to be published on ENTSO-E. Carried out in two stages, the checks related firstly to recurrent data and then to data related more to the circumstances of events, namely data relating to:

- Load, Generation and Transmission. The first ENTSO-E report refers to the data from August 2015.
- Balancing, Outages and Congestion management. The second ENTSO-E report refers to the data from January 2016.

The checks carried out by ACER related to the completeness of the data, and not their quality. The CREG carried out a similar check on a sample of 5 data for 2015 and 2016.

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<sup>147</sup> Source ACER see [www.acer.europa.eu](http://www.acer.europa.eu).

<sup>148</sup> Directives 2009/72/EC and 2009/73/EC.

<sup>149</sup> Regulations (EC) No 713/2009, (EC) No 714/2009 and (EC) No 715/2009.

<sup>150</sup> This regulation will be amended as part of the Winter Package.

112. In the context of REMIT, ACER wrote an open letter on the quality of transaction report data, on 16 February 2017. The purpose of this letter was to inform market participants (OMP, MP, RRM) that an assessment was under way regarding the completeness, accuracy and timeliness of the data. In its *REMIT Quarterly (Issue n° 8/Q1 2017)*, ACER points out that it has detected several common data quality issues: "These include delivery point or zone code misreporting, organised market place identifier code misreporting, inaccurate delivery profile definition, a missing or mismatched other side of the trade, missing order transactions, quantities and amounts that are zero, negative or unreported, inaccurate values and so on.". The agency informed market participants in writing of the shortcomings observed.

#### **ACER - FERC<sup>151</sup>**

113. ACER and FERC signed a *Memorandum of Understanding*<sup>152</sup> on 6 January 2015 as regards consultation, cooperation and information exchange on wholesale energy market monitoring. To strengthen their collaboration, an exchange of staff is organised between the two regulators.

114. It is not straightforward to measure the impact of REMIT on the well-being of energy consumers in Europe. However, the following paragraphs attempt to assess this impact by translating the American experiences into the results already obtained as regards the European Union's experiences. To this end, the reports and figures published by the FERC, the federal energy regulator in the United States, are compared with those of ACER for the European Union. For the purpose of this analysis, the annual reports of the FERC<sup>153</sup> and the annual reports of ACER<sup>154</sup> in the area of REMIT have been consulted from the second full year following the entry into force of the relevant legislation affecting them respectively. The indicators used are limited to the number of investigations launched and the amounts of the fines actually paid as a result of these investigations.

The FERC has published its reports since 2007, following the entry into force of the *Energy Policy Act of 2005* (hereinafter EAct 2005). With the entry into force of this Act, the FERC obtained additional powers, including the possibility of suspending a market participant and imposing civil law sanctions, as well as the repayment of unduly-obtained profits. ACER has been publishing its reports since 2013, following the entry into force of Regulation (EU) No. 1227/2011 of 25 October 2011. The application of the REMIT Regulation is enforced (Article 13) by national regulators on the basis of national legislation. The maximum fines and/or sanctions that can be imposed consequently vary between the United States and Europe.

The organisation, functioning and rules of the electricity markets are different in the United States and Europe. In addition, there are regional differences within the European Union itself. Moreover, investigations had already been launched prior to the implementation of the EAct 2005 and REMIT. A direct comparison of the figures presented and/or interpretation of the survey results should therefore be made with considerable caution. Specifically, the REMIT results presented below do not include the results of investigations conducted by national regulators and any resulting sanctions.

For the purpose of this analysis, market manipulation should be understood as meaning:

- \* in the United States

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<sup>151</sup> Federal Energy Regulatory Commission.

<sup>152</sup> <https://www.ferc.gov/legal/mou/2015/MOU-ACER.pdf>.

<sup>153</sup> *Reports on Enforcement*, <https://www.ferc.gov/enforcement/enforce-res.asp>.

<sup>154</sup> *REMIT Annual Reports*, [https://www.acer-remit.eu/portal/custom-category/remit\\_AR](https://www.acer-remit.eu/portal/custom-category/remit_AR).

- (i) a violation of the FERC's anti-manipulation rules,
- (ii) a violation under 18, § 1c of the CFR<sup>155</sup> (*Code of Federal Regulations*), and
- (iii) a violation under 18, §35.41 of the CFR<sup>156</sup>.

\* within the European Union

- (i) a violation of Article 3<sup>157</sup> of REMIT, and
- (ii) a violation of Article 5 of REMIT<sup>158</sup>.

The violations related to the disclosure of information are not included in the results presented below, due to very different requirements between the United States and the European Union.

An investigation or sanction may involve multiple violations. The investigation figures taken from the annual reports, shown in the charts below, have been analysed and compared, but some caution is advisable in their interpretation. Nevertheless, the figures may be slightly overestimated in relation to reality if the annual report does not contain sufficient detail.

Figure 11 shows that the number of investigations launched by the FERC and national regulators to verify whether there was any market manipulation is high during the first two years of the launch of EAct 2005, and then it decreases; on the other hand, the number of investigations initiated by REMIT has increased steadily since the first published report.

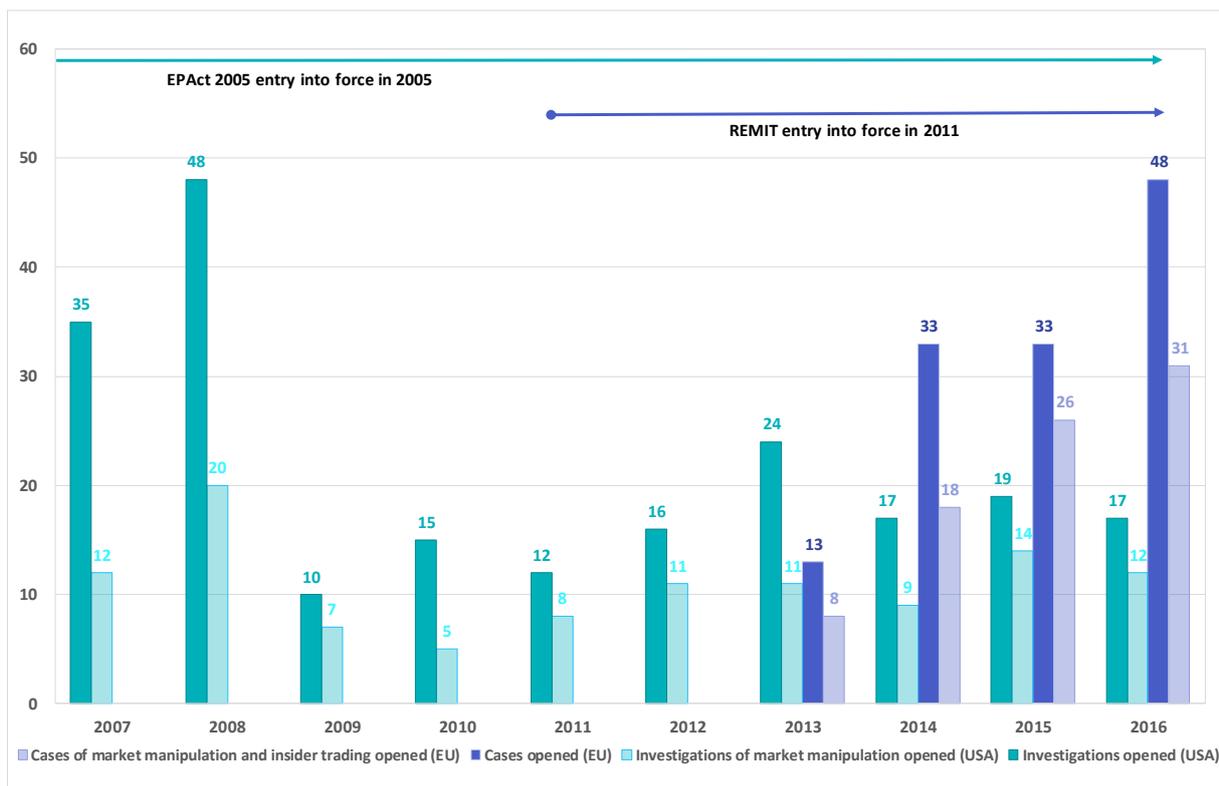


Figure 11: Total number of investigations launched, including cases of market manipulation and insider trading (USA vs. Europe)

Sources: CREG, FERC and ACER

<sup>155</sup> Prohibition to manipulate energy markets.

<sup>156</sup> Rules of conduct on the markets.

<sup>157</sup> Prohibition of insider trading.

<sup>158</sup> Prohibition to manipulate energy markets.

The larger increase observed in the European Union compared with the United States does not necessarily mean that more manipulations are identified in the former. Very soon after the launch of investigations, two administrative fines were imposed in the EU. Both investigations were contested by the market participants concerned: one fine was found to be invalidated by the courts and the other is still under appeal (see paragraph 78).

On the American side, although the first civil fines were imposed three years after the EAct 2005 came into effect, it was not until the sixth year that a sharp increase in the number of fines was observed (Figure 12).



Figure 12: Fines actually paid based on the number of investigations completed in the USA between 2007 and 2016  
Sources: CREG, FERC and ACER

In 2012 and 2013, the fines imposed were particularly high. For 2012, the attributable amount was the result of a single investigation, while in 2013, two investigations accounted for 97% of the fines imposed. There is no clear correlation between the number of investigations carried out<sup>159</sup> and the amount of fines imposed, suggesting that the amount of the fine is highly dependent on the behaviour of the market participant and that the years 2012 and 2013 have high statistical values. Excluding the three investigations, the average amount of fines imposed by the FERC was USD 18 million per year.

As regards the fines actually paid, no data are yet available on the European side.

<sup>159</sup> An investigation is closed if:  
 (i) no violations have been found;  
 (ii) a violation has been found without a fine being imposed;  
 (iii) a violation has been found and a fine has been imposed.  
 Other investigations unrelated to market manipulation are also taken into account.

In the REMIT Quarterly (Issue n°9/Q12017), ACER indicates that at the European level, 114 REMIT cases were "under Review" as of the 2<sup>nd</sup> quarter of 2017, as shown in the figure below. Since the 3<sup>rd</sup> quarter of 2016, the number of new REMIT cases was significantly higher than the number of closed cases.



Figure 13: number of cases "under review" between the 3<sup>rd</sup> quarter 2016 and the 2<sup>nd</sup> quarter of 2017  
Source: ACER

**ACER - other European authorities**

115. Regulations 713/2009 and 1095/2010 establishing, respectively, an Agency for the Cooperation of Energy Regulators and a European Securities and Markets Authority, do not directly provide for cooperation between the two authorities. However, Directive 2014/65/EU on Markets in Financial Instruments and Regulation 596/2014 on Market Abuse and Regulation 600/2014<sup>160</sup> on Markets in Financial Instruments, which will enter into full force on 3 January 2018, provide for cooperation between ACER and ESMA within a strict framework.

**Belgian energy regulators**

**The Federal Regulator: CREG**

116. The CREG, (Commission for the Regulation of Electricity and Gas), an autonomous body with legal personality, is the federal regulator for the Belgian electricity and gas markets. It was created to transpose into Belgian law Article 20 of Directive 96/92/EC of the European Parliament and of the Council of 19 December 1996 concerning common rules for the internal market in electricity and Article 21 of Directive 98/30/EC of the European Parliament and of the Council of 22 June 1998 concerning common rules for the internal market in natural gas. Established by the law of 29 April 1999

<sup>160</sup> This Regulation will apply from 3 January 2018 (Article 55), however certain articles will apply on other dates.

on the organisation of the electricity market and by the law of 29 April 1999 on the organisation of the gas market and the tax status of electricity producers, the CREG was set up on 10 January 2000.

In addition to its mission to advise public authorities, the CREG's responsibilities include supervising transparency and competition on the electricity and natural gas markets, it must safeguard the fundamental interests of consumers and ensure that market conditions are aimed at the public interest and are consistent with overall energy policy. Specifically, the CREG is competent for matters relating to tariffs for the transmission of electricity and natural gas, and the storage of natural gas. It is responsible for approving the tariffs of Elia, Fluxys Belgium and Fluxys LNG.

#### The CREG's missions in the context of Transparency, REMIT and MIFID

117. The CREG, as a national regulatory authority, is responsible, in the context of transparency, for ensuring that primary data owners, TSOs and data providers comply with their obligations under Regulation (EU) No 543/2013<sup>161</sup> and for ensuring compliance with Regulation (EC) No 715/2009 and the guidelines intended to ensure the minimum level of harmonisation required for the conditions for access to the transmission networks and their facilities<sup>162</sup>. In accordance with the electricity law and the gas law, the CREG has a general mission to monitor and control the application of laws and Regulations concerning the organisation and functioning of the electricity and natural gas markets<sup>163</sup>. This monitoring mission is set out in detail by law, including:

- monitoring of the transparency and competition on the electricity and natural gas markets<sup>164</sup>;
- monitoring the level of transparency, including wholesale prices, and scrutiny of electricity companies' compliance with transparency obligations<sup>165</sup>;
- a check on compliance by the natural gas transmission system operators, LNG facility operators and natural gas storage facility operators, as well as electricity and natural gas companies, with the obligations incumbent on them under the present law and its implementing decrees, as well as with other legislative and regulatory provisions applicable to the electricity and natural gas markets, in particular as regards cross-border issues and matters covered by Regulation (EC) No 714/2009 and Regulation (EC) No 715/2009<sup>166</sup>.

As the national regulatory authority, the CREG is responsible for enforcing the REMIT Regulation in Belgium. In effect, it guarantees the application of prohibitions on insider trading and market manipulation, as well as the application of the obligation to disclose inside information<sup>167</sup>. To this end, it has the relevant investigative and enforcement powers to allow it to carry out this task in accordance with national legislation and subject to appropriate supervision<sup>168</sup>. The sanctions system applicable to breaches of the REMIT Regulation by the CREG is laid down by the electricity and gas laws<sup>169</sup>. The CREG must collaborate at the regional level and with ACER to monitor trading in wholesale energy products, in order to detect and prevent transactions based on inside information and market manipulation<sup>170</sup>.

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<sup>161</sup> Article 4 (6) of Regulation (EU) 543/2013.

<sup>162</sup> Article 24 of Regulation (EC) No 715/2009.

<sup>163</sup> Article 23, §2, of the electricity law and Article 15/14, §2, of the gas law.

<sup>164</sup> Article 23, §2, 3° of the electricity law and Article 15/14, §2, 3° of the gas law.

<sup>165</sup> Article 23, §2, 5° of the electricity law and Article 15/14, §2, 16° of the gas law.

<sup>166</sup> Article 23, §2, 8° of the electricity law and Article 15/14, §2, 5° of the gas law.

<sup>167</sup> Article 13 (1) of Regulation (EU) 1227/2011.

<sup>168</sup> Recital 26 and article 13 (1) of Regulation (EU) 1227/2011.

<sup>169</sup> Article 18 of Regulation (EU) 1227/2011.

<sup>170</sup> Article 7 (1) and 2 of Regulation (EU) 1227/2011.

It is also responsible for the registration of market participants<sup>171</sup> and establishing the national register, which it sends to ACER. The electricity law and the gas law give the CREG the task of monitoring and checking commercial trading in wholesale energy products in accordance with the REMIT Regulation, with due observance of the respective powers of the Belgian Competition Authority and the FSMA<sup>172</sup>. In the event of a violation of the REMIT Regulation, the electricity law and the gas law confer investigative powers on the CREG<sup>173</sup> and allow it, firstly, to seize assets which are the property of the person under investigation by the Commission and which are either the subject of the violation under examination, or were intended for, or used to, commit the violation in question, or constitute a patrimonial advantage derived directly from the violation or its equivalent<sup>174</sup> and, secondly, temporarily prohibit a person from exercising professional activities that carry the risk of a new violation<sup>175</sup>.

### **CREG - FSMA**

118. The CREG does not monitor the purely financial world, and as such there is no mention of financial regulations in the CREG's missions. Nevertheless, in order to have a coordinated approach on the integrity and transparency of energy markets, the CREG works in collaboration with the FSMA and consequently signed a *Memorandum of Understanding*<sup>176</sup> (MoU) on 27 January 2017.

This memorandum lays down the terms of cooperation as regards the exchange of information and expertise between the two authorities in order to ensure the integrity and transparency of energy markets.

This memorandum defines:

- the purpose and scope;
- 3 types of cooperation: spontaneous transmission of information, requests for information and consultation and assistance;
- the terms of cooperation for requesting information, consultation and assistance: means of communication, use of data and confidentiality;
- miscellaneous provisions: entry into force, adaptation of the memorandum, communication of the memorandum.

This memorandum also establishes a regular bilateral meeting between the CREG and the FSMA.

### **ACER - CREG**

119. The European Regulations and national laws organising these two authorities explicitly and simultaneously include certain tasks and/or reciprocal obligations to be performed.

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<sup>171</sup> Article 9 of Regulation (EU) 1227/2011.

<sup>172</sup> Article 23, §2, 4° of the electricity law and Article 15/14, §2, 5°bis of the gas law.

<sup>173</sup> Article 26, §1ter, of the electricity law and Article 18, §3, 4° of the gas law.

<sup>174</sup> Article 31/1 of the electricity law and Article 20/3 of the gas law.

<sup>175</sup> Article 31/2 of the electricity law and Article 20/4s of the gas law.

<sup>176</sup> This memorandum of understanding between the CREG and the Financial Services and Markets Authority can be found on the websites of the CREG and the FSMA, specifically [http://www.creg.be/fr/a-propos-de-la-creg/collaboration-avec-dautres-instances#h2\\_5](http://www.creg.be/fr/a-propos-de-la-creg/collaboration-avec-dautres-instances#h2_5).

While Article 7 of Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators covers certain tasks relating to national regulatory authorities, the electricity law of 29 April 1999 and the gas law of 12 April 1965 stipulate in Articles 23 and 15/14 respectively that the CREG shall take all reasonable measures to "*promote, in close cooperation with ACER, the European Commission, the regulatory authorities of the Regions and other Member States, a competitive, secure and sustainable internal market for electricity within the European Community, and an effective market opening for all customers and suppliers in the European Community*".

### **CREG - other national authorities**

120. The national legislation provides for collaboration between the FSMA, the CREG and the BCA. In the exercise of these supervisory and checking tasks, the electricity law and the gas law stipulate that the CREG shall cooperate strictly with the Belgian Competition Authority (BCA) and the FSMA, and shall exchange and communicate, as the case may be to each other, the necessary and relevant information for the proper implementation of Regulation (EU) No 1227/2011 or in the cases provided for or authorised by this Regulation. If the CREG receives information from other authorities in the exercise of its supervisory and checking tasks, it shall ensure the same level of confidentiality as that required of the authority providing it.

The CREG signed a *Memorandum of Understanding* (see paragraph 118) with the FSMA on 27 January 2017, while a Royal Decree is still at the drafting stage as regards a MoU with the BCA. Cooperation between authorities under REMIT and MAD is illustrated in Figure 14.

### The regional regulators<sup>177</sup>: VREG, CWaPE and BRUGEL

121. The three regional regulators, the VREG (*Vlaamse Reguleringsinstantie voor de Elektriciteits-en Gasmarkt*), the CWaPE (Commission Wallonne pour l'Energie) and BRUGEL (BRUxelles Gaz Electricité) regulate the electricity and gas markets of the three respective regions. Entrusted, firstly, with an advisory role among public authorities in their fields of competence and, secondly, with a general mission of monitoring and checking compliance with the relevant legislation, they are also competent for distribution tariffs.

Article 23quater, §3, of the electricity law stipulates inter alia that the CREG shall cooperate with regional regulatory authorities.

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<sup>177</sup> [www.vreg.be](http://www.vreg.be) for Flanders, [www.cwape.be](http://www.cwape.be) for Wallonia, and [www.brugel.be](http://www.brugel.be) for Brussels.

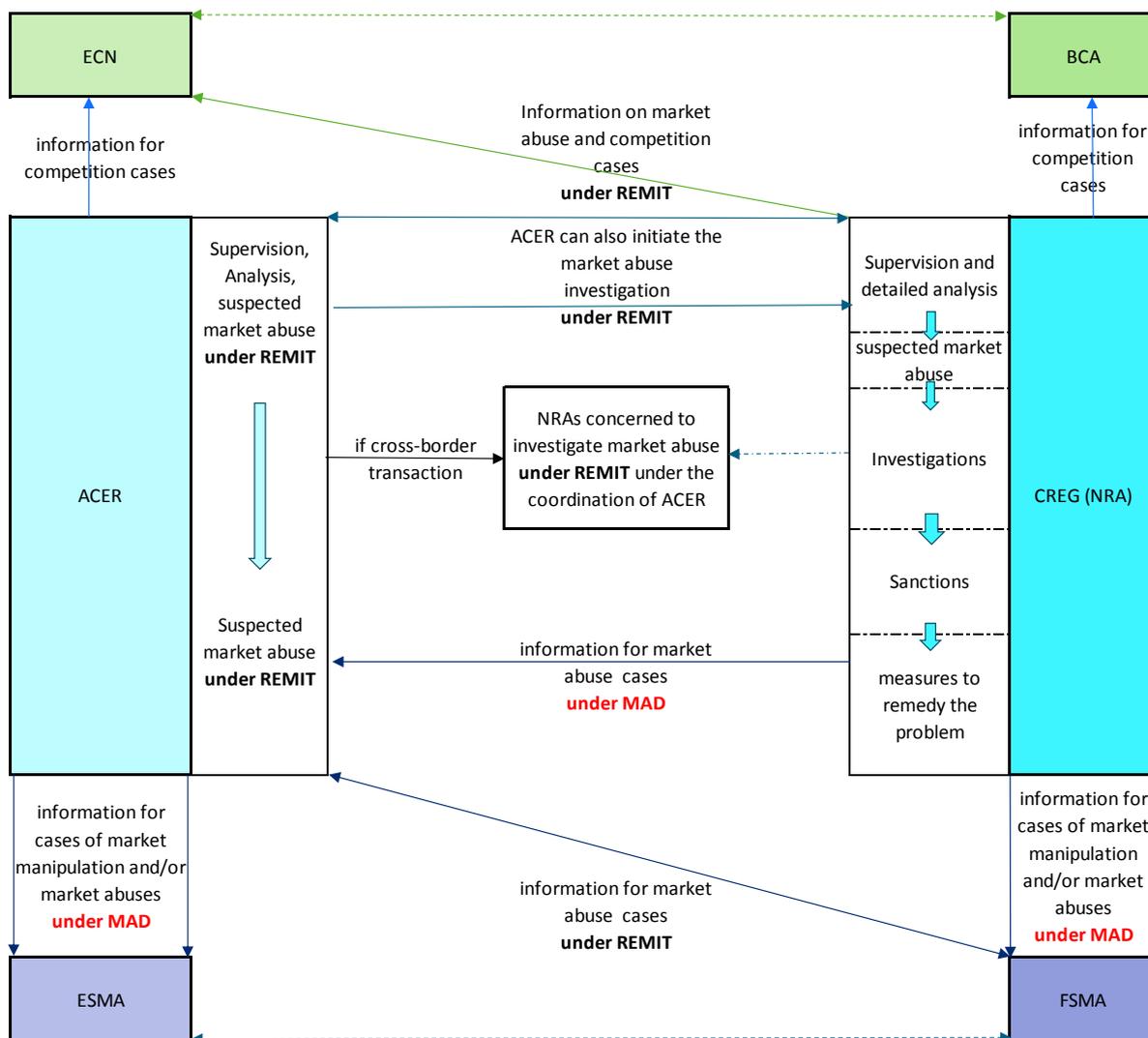


Figure 14: cooperation between authorities under REMIT and under MAD  
Sources: ACER, CEER

## 2.2. FINANCIAL AUTHORITIES

### ESMA - ESMA<sup>178</sup>

122. The<sup>179</sup> *European Securities and Markets Authority (ESMA)* is an independent EU authority that aims to improve investor protection and promote the stability and smooth functioning of financial markets.

<sup>178</sup> [https://europa.eu/european-union/about-eu/agencies/esma\\_fr](https://europa.eu/european-union/about-eu/agencies/esma_fr).

<sup>179</sup> ESMA replaced the Committee of European Regulators on 1 January 2011. Together with the European Banking Authority and the European Insurance and Occupational Pensions Authority, ESMA forms the European System of Financial Supervision. Each EU Member State has a representative who sits on the ESMA.

ESMA pursues 3 objectives:

- protect investors: ensuring better responsiveness to the needs of consumers of financial services and strengthening their rights as investors, while recognising their responsibilities;
- ensure the proper functioning of markets: promoting the integrity, transparency, efficiency and smooth functioning of financial markets and the presence of a sound market infrastructure;
- ensure financial stability: strengthening the financial system to withstand shocks and the emergence of financial imbalances, and foster economic growth.

ESMA is also responsible for coordinating the measures taken by securities supervisory authorities, or adopting emergency measures in the event of a crisis.

ESMA publishes *Questions and Answers* (Q&A) on various subjects relating to Financial Instruments, which can be consulted at <https://www.esma.europa.eu/databases-library/esma-library><sup>180</sup>.

## FSMA<sup>181</sup>

123. The FSMA<sup>182</sup>, an autonomous public body, is the Financial Services and Markets Authority established by the Royal Decree of 3 March 2011 implementing changes in the control structures of the financial sector and created on 1 April 2011, succeeding the former Banking, Finance and Insurance Commission (CBFA).

Following the financial crisis of 2008, the Belgian legislator shifted the supervision of the Belgian financial markets towards a bipolar model, consisting of the split of supervision of prudential rules and conduct of business rules. The National Bank of Belgium performs the various functions of macro- and micro-prudential supervision, while the new financial authority, FSMA, performs all the functions of supervision of financial markets and products, and checks the conduct of business rules applicable to the financial sectors as well as the monitoring of information and protection of consumers of financial products and services<sup>183</sup>.

The FSMA's mission is to oversee the supervision of financial markets and listed companies, to approve and monitor certain categories of financial institutions, to ensure compliance with conduct of business rules by financial brokers, to supervise the marketing of investment products intended for the general public and to exercise so-called "social" checks on supplementary pensions. The legislator has also mandated FSMA to contribute to the financial education of savers and investors<sup>184</sup>.

The levying of administrative fines, particularly for market abuse, is entrusted to a body which is independent of the FSMA, the Sanctions Committee.

## ESMA - FSMA

124. Under Article 16 of the Regulation establishing ESMA (1095/2010), competent authorities, like financial regulators, must make every effort to comply with its guidelines and recommendations in order to ensure consistent, efficient and effective supervision.

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<sup>180</sup> [https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38\\_gas\\_markets\\_structures\\_issues.pdf](https://www.esma.europa.eu/sites/default/files/library/esma70-872942901-38_gas_markets_structures_issues.pdf).

<sup>181</sup> *Financial Services and Market Authority*.

<sup>182</sup> <http://www.fsma.be/fr/About%20FSMA/Organisatie.aspx>.

<sup>183</sup> Communication CBFA\_2011\_15 of 23 March 2011 (translation).

<sup>184</sup> <http://www.fsma.be/fr/About%20FSMA/Organisatie.aspx> (translated from the French version).

The FSMA contributes to the work of the ESMA, in particular in the area of consumer and investor protection. It has also examined the activity of brokers, and the application of MiFID under various aspects.

ESMA also adopted a memorandum of understanding (MoU) in the form of guidelines with the competent authorities, including the FSMA, on 5 June 2014. This agreement provides a general framework for collaboration and exchange of information between the competent authorities on the one hand, and between the competent authorities and ESMA on the other. The MoU defines how requests for information exchange should be formulated and executed. It also sets out the rules to be observed regarding confidentiality and the possible use of information received.

#### **ESMA – ACER**

125. Initiated in 2011, cooperation between ACER and ESMA was formalised in July 2013 by a Memorandum of Understanding (MoU) intended to facilitate cooperation and a coordinated approach to wholesale energy markets.

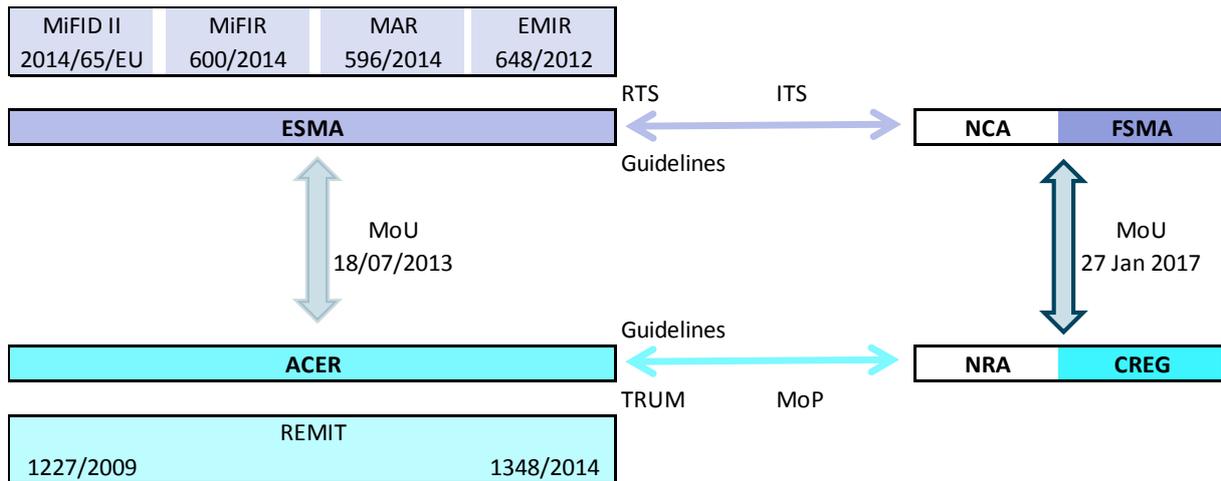
This agreement addresses common areas of regulatory concern:

- the implementation of legislation on market abuse under MAD and REMIT and on data collection under MIFID, EMIR and REMIT, as well as legislation which has an impact on the overall functioning of the wholesale markets of the European Union;
- the establishment of consistent, efficient and effective regulatory practices to ensure common, uniform and consistent application of EU legislation;
- improving the effectiveness of the market supervision carried out by the competent authorities, including the use by competent authorities of the various market supervision instruments.

In the context of this MoU,

- ACER and ESMA undertake to consult each other in the context of guidelines, recommendations and draft regulatory technical standards concerning their respective competencies to ensure that the specificities of the financial and energy sector are fully taken into account.
- In accordance with Article 16, paragraph 3, point b) of REMIT, ACER must notify if it has reasonable grounds to suspect that acts are or have been committed on wholesale energy markets which constitute market abuse within the meaning of Directive 2003/6/EC, and which affect Financial Instruments, subject to Article 9 of this Directive.

ESMA also has a working group that analyses issues relating to the derivatives market. One of these concerns is the cooperation between the financial world and ACER, who attends this working group as an observer.



**Legend**

**RTS:** Regulatory Technical Standards

**ITS:** Implementing Technical Standards

**TRUM:** Transaction Reporting User Manual

**MoP:** Manual of Procedures

Figure 15: ESMA – ESMA and ACER

Source: CREG

## 2.3. THE BANKING AUTHORITIES

### EBA

126. The European Banking Authority<sup>185</sup> (EBA) is an independent EU authority working to ensure an effective and consistent level of regulation and prudential supervision throughout the European banking sector. Its main objectives are to maintain financial stability in the EU and to ensure the integrity, efficiency and smooth functioning of the banking sector.

The EBA is part of the European System of Financial Supervision (ESFS), which consists of three supervisory authorities: the European Securities and Markets Authorities (ESMA), the European Banking Authority (EBA) and the European Insurance and Occupational Pensions Authority (EIOPA). This system also includes the European Systemic Risk Board (ESRB), the Joint Committee of European Supervisory Authorities and national supervisory authorities.

The EBA is independent but reports to the European Parliament, the Council of the European Union, and the European Commission.

The activities<sup>186</sup> of the EBA are:

- contributing to the establishment of a single set of rules for the EU banking sector: the Uniform Regulation;
- ensuring centralised reporting of prudential data on EU banks to increase transparency, market discipline and financial stability across the EU;
- encouraging national authorities to cooperate in monitoring banking groups operating in more than one country, and arbitrating disputes involving multiple countries;

<sup>185</sup> [http://www.eba.europa.eu/languages/home\\_fr](http://www.eba.europa.eu/languages/home_fr).

<sup>186</sup> [http://europa.eu/european-union/about-eu/agencies/eba\\_fr](http://europa.eu/european-union/about-eu/agencies/eba_fr).

- promoting a transparent, simple and fair EU market for consumers of financial products and services, and ensuring that all consumers are treated fairly and protected throughout the EU.

Its missions and tasks<sup>187</sup> are

- improving the functioning of the internal market by ensuring appropriate, effective and harmonised supervision and regulation at the European level;
- contributing, through the adoption of binding technical standards and guidelines, to the creation of a single set of banking regulations to provide a single set of harmonised prudential rules for financial institutions across the EU, helping to create a level playing field and providing a high level of protection for depositors, investors and consumers;
- fostering the convergence of supervisory practices to ensure harmonised application of prudential rules. The EBA is also responsible for assessing risks and vulnerabilities in the European banking sector, in particular through regular risk assessment reports and pan-European crisis simulations;
- investigating cases of inadequate application of EU legislation by national authorities, taking decisions in emergency situations and organising mediation in the event of disagreement between competent authorities in cross-border situations;
- acting also as an independent advisory body to the European Parliament, the Council and the Commission.

## **NBB**

127. The National Bank of Belgium was established by the law of 5 May 1850.

Today, the National Bank is governed first by the European Treaty and the Protocol on the Statute of the European System of Central Banks and the ECB annexed thereto, and secondly by its Organic Law<sup>188</sup> and its own statutes approved by Royal Decree. It is only subject to the ordinary law of public limited liability companies as a suppletive measure.

The NBB has a number of different activities and missions, in particular:

- The National Bank plays an important role in the collection, production, analysis and dissemination of economic and financial information. In addition to macroeconomic information on the Belgian economy as a whole, it collects microeconomic information on individual firms and economic agents. It endeavours to disseminate them as quickly and widely as possible;
- in terms of financial supervision, the National Bank is responsible for the supervision of individual financial institutions, known as micro-prudential supervision, and for macro-prudential supervision, which relates to the proper functioning of the financial system as a whole. The competence for financial supervision in Belgium is shared with FSMA - ESMA (see above).

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<sup>187</sup>[http://www.eba.europa.eu/languages/home\\_fr](http://www.eba.europa.eu/languages/home_fr).

<sup>188</sup> Law of 22 February 1998 establishing the organic status of the National Bank of Belgium.

## 2.4. COMPETITION AUTHORITIES

### ECN<sup>189</sup>

128. The European Competition Network (ECN) was created by Community Regulation No. 1/2003 on the implementation of Community competition rules, and brings together the national competition authorities (NCAs) of the 27 EU Member States around the European Commission.

All EU countries have national competition authorities empowered to enforce EU competition law. These authorities use the European Competition Network to exchange information with the Commission on the implementation of EU rules. This network makes it easier to define which bodies to contact to report a problem or obtain assistance<sup>190</sup>.

There are three main activities of the ECN:

- ensuring the coherence of Community competition policy;
- involving NCAs in the adoption of decisions of the European Commission in the area of competition;
- enabling the Commission and NCAs to work together on more general or sectoral issues.

### BCA<sup>191</sup>

129. The Belgian Competition Authority (BCA) is an independent administrative authority with legal personality, which started its activities on 6 September 2013. The BCA helps define and implement competition policy in Belgium. Specifically, the BCA prosecutes anti-competitive practices, including cartels and abuses of a dominant position, and monitors major mergers and concentration operations. The BCA cooperates with the competition authorities of the EU Member States and the European Commission within the European Competition Network (ECN).

The Belgian Competition Authority prosecutes restrictive practices in Belgium. On its own initiative or at the request of complainants, it intervenes as soon as competition is distorted in a market, irrespective of the activity in question or the private or public status of the operators.

The Belgian Competition Authority can adopt provisional measures in urgent cases, issue injunctions, impose financial penalties and accept undertakings in the context of investigating the merits of cases.

It also carries out prior checking of merger transactions which reach turnover thresholds.

### ECN - BCA

130. The Belgian Competition Authority cooperates with other competition authorities within the *European Competition Network*<sup>192</sup> (ECN) and the *European Competition Authority*<sup>193</sup> (ECA).

This cooperation primarily concerns infringement proceedings and concentration operations discussed in the European Advisory Committees (Regulations (EC) 1/2003 and 139/2004) as well as the Belgian contribution in the various ECN working groups.

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<sup>189</sup> <http://eur-lex.europa.eu/legal-content/FR/TXT/HTML/?uri=URISERV:l26109&from=FR>.

<sup>190</sup> [http://ec.europa.eu/competition/consumers/cooperation\\_fr.htm](http://ec.europa.eu/competition/consumers/cooperation_fr.htm).

<sup>191</sup> <http://www.abc-bma.be/fr/propos-de-nous>.

<sup>192</sup> [http://ec.europa.eu/competition/ecn/index\\_en.html](http://ec.europa.eu/competition/ecn/index_en.html).

<sup>193</sup> The Association of European Competition Authorities, which is also known as ECA, is an association founded in April 2001, which brings together the national competition authorities of EEA (*European Economic Area*) countries to combat cartels.

### 3. THE MARKET PARTICIPANTS MET BY THE CREG IN THE CONTEXT OF THIS STUDY

#### SUMMARY

131. In recent months, the CREG has met some of the most important market participants in Belgium. These represent more than 85% of the volume of producers/suppliers/TSOs. Chapter 3 contains a summary of the information on them.

Each meeting was organised in three stages:

- following an invitation from the CREG by e-mail, an informal meeting was organised at its offices. During the meeting, the supplier/producer/TSO presented their company and their responses to the points mentioned in the e-mail;
- following the informal meeting, a registered letter with acknowledgement of receipt was sent to them to obtain written confirmation of the information obtained. In some cases, additional information was requested by e-mail;
- an internal report was compiled after the responses were received.

Two suppliers were summoned by the Executive Committee to appear before the CREG.

132. The implementation of Transparency and REMIT entails costs for all market participants. The information provided by the companies interviewed cannot be consolidated since certain data are linked to the Belgian market alone and other data are consolidated at their group level. On the basis of this information, it is impossible to give an order of magnitude for the Belgian market alone. However, the CREG notes that market participants incur investment and maintenance costs which are often considerable.

133. In a general and simplified way, the information flows follow the diagram shown in Figure 16 moving from the market participants - the primary data owners - to the ACER databases.

The fundamental data (green arrows) mainly moves via TSOs to transparency platforms, with the exception of certain data that pass through the EEX or JAO channel.

Orders and trades (maroon arrows) are sent directly by OMPs, *brokers* and RRM to ACER.

Inside information (yellow arrow) can be communicated by an UMM to market participants.

Information passing through the Financial Instruments channel which is required for REMIT (purple arrows) can also pass via TRs (*Trade Repositories*) via the financial regulators who will then transmit it to ACER.

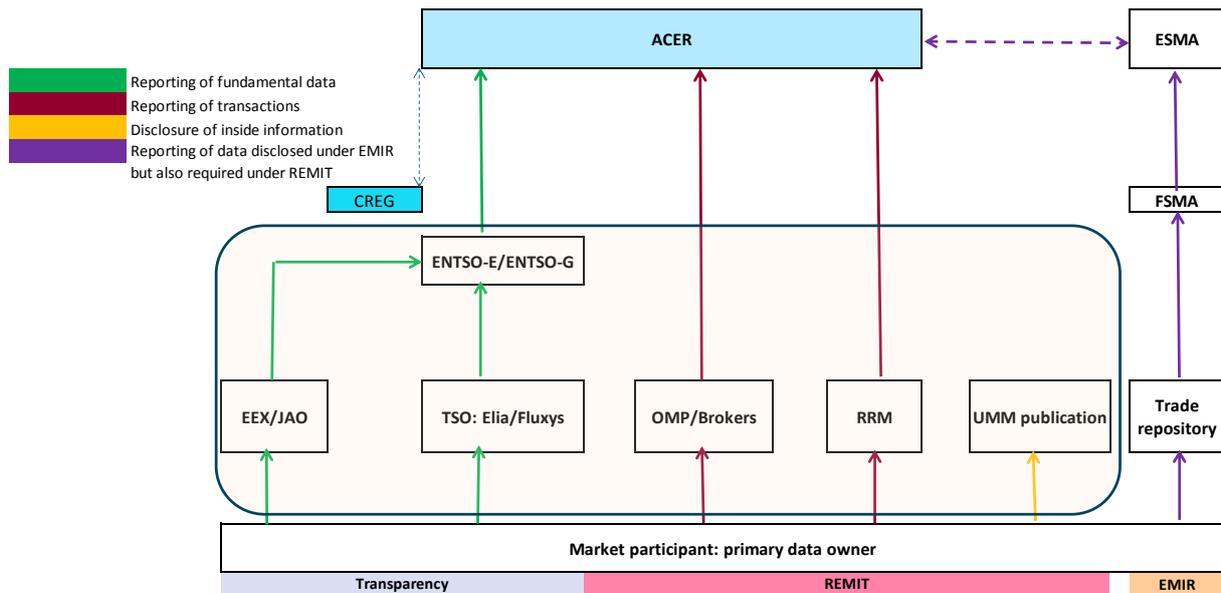


Figure 16: Diagram of information flows in general  
Source: CREG

134. The obligations of a market participant dealing with wholesale energy products - as described in the Transparency, REMIT and Financial Instruments legislation - are presented superficially in the decision tree shown in Figure 17.

By way of example (see red arrows in the chart) for the Belgian market, an electricity producer will communicate - either to ELIA or to EEX - an outage of a generation unit (Article 15 of 543/2013) in the context of:

- Transparency if this unit has a capacity of at least 100 MW;
- REMIT, in accordance with Article 15 of 543/2013 or if the outage is likely to have a significant influence on wholesale electricity prices.

Then, ELIA/EEX will communicate this information to ENTSO-E (article 8 (1) of 1348/2014), which will publish it on its transparency platform and, in the context of REMIT, will declare it to ACER.

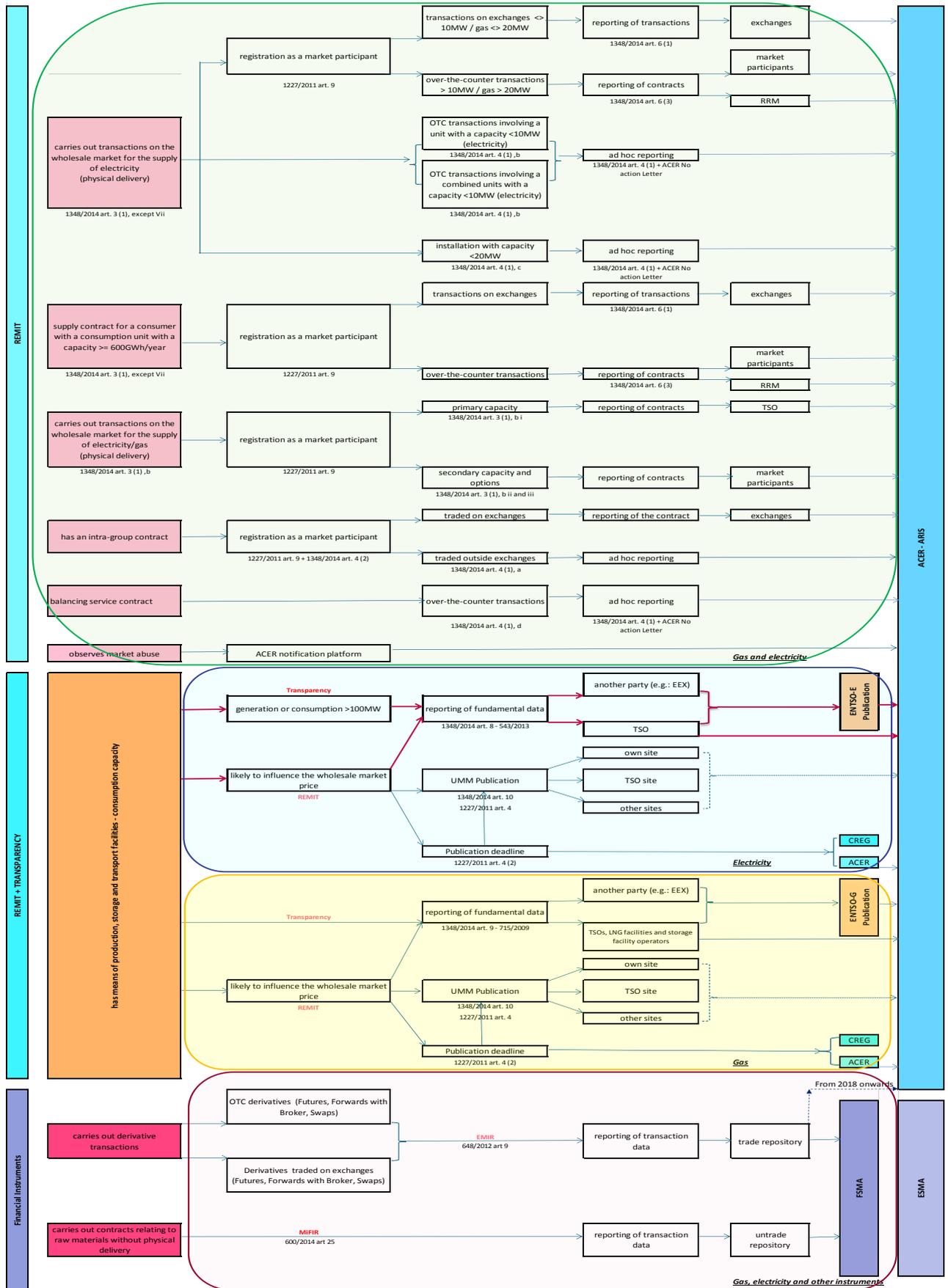


Figure 17: Simplified decision tree for a market participant dealing in wholesale energy products  
Source: CREG

## 4. CONCLUSIONS

135. This study presents in a general summary the main European Regulations and Directives relating to:

- a. Transparency,
- b. REMIT,
- c. and Financial Instruments,

to identify the obligations of market participants. This legislation will continue to undergo numerous developments in the coming months and years, including ensuring better harmonisation between them.

136. ACER and ESMA, aware of the need for greater coordination of the above-mentioned legislation, continue to strengthen their cooperation and the cooperation between the competent national authorities at both the European and national level.

137. The regular updating of materials including those relating to REMIT - ACER *Guidance*, MoP, Q&A, FAQ, *Implementation Guidance*, *List of inside information platforms*, *REMIT Report* available at <https://acer-remit.eu> - enables market participants to obtain the information and concrete interpretations of these Regulations.

138. ENTSO-G has been operational since 1 October 2013 and ENTSO-E was launched on 5 January 2015.

The European Commission and ACER organised the supervision of the transparency platforms ENTSO-G and ENTSO-E respectively.

In the context of REMIT, ACER evaluated the completeness, accuracy and timeliness of transaction data with OMPs, MPs and RRM.

In all cases, the checks highlighted the fact that the data quality could be improved.

139. Various (transparency) platforms - including AGSI+ and ALSI - have been voluntarily set up at the European level by TSOs without regulatory constraints. The result is a limited participation of European TSOs, and insufficient checks.

140. Meetings with market participants revealed that European transparency platforms have been improving over the years. Nevertheless, assessments of them vary significantly.

ENTSO-E receives the most criticism. The main shortcomings identified by the market participants who met the CREG are as follows:

- the lack of user-friendliness and ease of use, such as slow page loading, the lack of automatic date updates on a data page, inefficient filters, layout problems, interfaces not adapted to the reality of countries, inadequate formats for data extraction;
- the content and the inconsistency of formats between TSOs, and data quality.

ENTSO-G is perceived as a user-friendly platform which continually invests in ease of use and access to its data. However, market participants would like to see the following improvements:

- the provision of tariff data for all TSOs;
- additional data on gas quality;

- additional information on storage and LNG;
- consistency with Prisma by creating "*marketable capacity*" data.

ENTSO-G also organises public consultations to assess the level of satisfaction of its platform by market participants.

The ASGI+ and ALSI platforms constitute real added value for understanding the day-to-day price fluctuations in the European gas market. However, the data are incomplete because some storage devices or terminals do not communicate their data.

141. The CREG met various market participants who are active on the Belgian wholesale electricity and gas markets.

From these meetings, it was clear that market participants are getting better at implementing the legal requirements relating to Transparency, REMIT and Financial Instruments, but some are better than others. The difficulties encountered in applying these legal obligations stem from, among other things:

- regular modifications to the legal provisions;
- their terms;
- written supports which are incomplete and often corrected by the responsible entities;
- the significant costs involved;
- the specific nature of each market participant.

Various points attracted the attention of the CREG:

- the primary data owner and/or data provider communicate their data without necessarily verifying that it is properly published on the platform on an ad hoc basis, for two main reasons:
  - the data enters a "*black box*", often rendering any check impossible;
  - non-compliance with legal obligations, i.e. the primary data owner and/or the data provider do not verify that the data sent on the platform actually correspond to the published data;
- not all market participants have their own (non-mandatory) transparency platform enabling all market participants to ensure access to information if a shortcoming is found on European transparency platforms;
- all market players have their own specific characteristics, making it impossible to classify them, from a Belgian perspective;
- the monitoring of data flows is sometimes complex, making it difficult to monitor all data coherently and making checks by the national regulator difficult.

In particular, the meetings with the TSOs organised by the CREG highlighted the fact that:

- there is a significant risk that a unit of less than 100 MW may, at any given moment, have a significant impact on prices. As such, the CREG recommends that all *outages* of more than 25 MW which are reported to Elia be communicated by the TSO to ENTSO-E. This recommendation is based on the REMIT regulations, which do not set any capacity limits, unlike Transparency. The non-disclosure of these data could have considerable repercussions both for the market and for the participant who has not disclosed the information required by REMIT. This heavy responsibility lies with the market participants

directly concerned. In effect, Article 4 (1) of REMIT stipulates that it is the *Market participants [who] shall publicly disclose in an effective and timely manner inside information which they possess [...]*;

- to date, Elia only checks the correct reception of the sending of data files and not the actual data sent to ENTSO-E. Moreover, Elia does not carry out validity checks (completeness and accuracy) of its data available on the ENTSO-E platform. Nevertheless, Elia and ENTSO-E analyse the possible development of tools and procedures to be implemented in order to improve this completeness and quality: *dashboards*, monitoring and diagnostic reports, harmonisation of publication flows on Elia.be and ENTSO-E TP, etc.;
- it does not appear that ENTSO-E has put in place plausibility checks for the data received. Once informed by the CREG, ENTSO-E neither corrects the erroneous data found within a reasonable time nor informs market participants of the existence of such errors pending their correction. According to Elia (translation), "*the implementation of plausibility checks and reports on these checks, which will be available on the site for all Data providers, will address this concern*";
- on three occasions, the CREG made a check on five datasets covering the period from January 2015 to December 2016, and came to the following observations for the data checked, and in particular,
  - the missing data;
  - data for daylight savings days are still problematic and the different formats of the numbers displayed show inconsistencies between the data according to the platforms consulted (Elia/ENTSO-E)<sup>194</sup>;
  - the differences between data calculated or measured at borders. A historical record of these data from January 2015 onwards has not yet been compiled by Elia<sup>195</sup>.
- the CREG found anomalies in the data published on Elia's website which may restrict market participants' access to these data.
- Elia only makes part of the data sent on the ENTSO-E platform available to market participants, unlike Fluxys, which allows each market participant to find the same data regarding the Belgian market on both the ENTSO-G and Fluxys transparency platforms. Elia confirmed that this point would indeed be improved as part of an internal project;
- the CREG did not find any discrepancies between the data available on ENTSO-G and that presented on the Fluxys platform.

At the time of publication of this study, the above-mentioned problems had been taken into account by the market participants concerned and they undertook to communicate a timetable for following up and/or resolving the problems detected before the end of this year. The CREG will nonetheless continue its mission to improve the transparency of the data made available to market participants, in compliance with legal requirements.

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<sup>194</sup> The data for the Sundays of March (summer time) and October (winter time) will be entered manually from the end of September and the data will be communicated with 3 decimal places.

<sup>195</sup> According to Elia (translation) - from January 2017 onwards - there would no longer be any difference between the data published on Elia and ENTSO-E (with the exception of values on the French border, for which RTE is the main data provider for the ENTSO-E platform).

142. A public consultation will be organised by the CREG shortly and a summary of the evaluations received will subsequently be published.

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For the Commission of Electricity and Gas Regulation

Andreas TIREZ  
Director

Laurent JACQUET  
Director

Marie-Pierre FAUCONNIER  
President of the Management Committee

## 5. ANNEXES

### 5.1. GLOSSARY

**3rd energy package:** this title groups together

- two Directives pertaining to gas markets (**2009/73/EC**) and electricity markets (**2009/72/EC**) ;
- two Regulations concerning the conditions for accessing natural gas transmission networks (**715/2009**), and the conditions for accessing to the network for cross-border electricity exchanges (**714/2009**);
- the Regulation **713/2009** establishing ACER.

**Attempted market manipulation** is

- a) entering into any transaction, issuing any order to trade or taking any other action relating to a wholesale energy product with the intention of:
- (i) giving false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
  - (ii) securing the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or
  - (iii) employing a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- b) (b) disseminating information, whether through the media, including the Internet, or by any other means, for the purpose of giving false or misleading information about the supply, demand or price of wholesale energy products;

**Central counterparty**, a legal person that interposes itself between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer.

**Commodity** is any fungible good that can be supplied, including metals and their minerals and alloys, agricultural products and energy supplies, such as electricity (article 2 (1) of Regulation (EC) n° 1287/2006).

**Council of European Energy Regulators** (CEER) is an association created in 2000 on the initiative of the national energy regulators of the Member States of the European Union and the European Economic Area. CEER's structures include a general assembly, a board, working groups specialising in various areas such as electricity, gas, consumers and a secretariat.

**European Energy Exchange** (EEX) is the main energy exchange in Central Europe active on the spot and derivatives markets, in particular for electricity, natural gas, CO2 emission allowances and coal.

**European legislation:** Within the hierarchy of EU legal norms, the Regulations and Directives covered in this study are summarised in secondary European law.

- The treaties and treaties of accession form primary law and are at the top of the hierarchy.
- Fundamental Rights and the General Principles of Community Law (GPCL).
- External agreements concluded by the European Union.
- Secondary European legislation:
  - binding acts:
    - **Regulations:** uniform rules directly applicable in all Member States;
      - Implementing regulations
      - Delegated Regulations
    - **Directives:** set the objectives to be achieved by the Member States, to whom they delegate the choice of means;
      - Delegated Directives
    - Decisions: make it possible to regulate specific situations.
  - Non-binding acts
    - Case law
    - Specific rules
    - Recourse
    - Others

**European network codes** are common rules, prepared by the European associations bringing together TSOs for electricity and gas, covering cross-border issues included in the Community Regulations. They become legally binding after their passage through comitology.

**ENTSO**, European Network of Transmission System Operators) for electricity (**ENTSO-E**) and for gas (**ENTSO-G**). In this context, transmission system operators participate in the accomplishment and functioning of the European internal market for natural gas and electricity, cross-border trade and the development of European network codes.

**ENTSO-E**, the European Network of Transmission System Operators for electricity, which represents 42 GRTs in 35 countries.

**ENTSO-G**, the European Network of Transmission System Operators for gas, which represents 43 GRTs in 26 countries.

**EPEX SPOT** is an exchange which manages spot markets for electricity in France, Germany, Austria and Switzerland.

**Financial Counterparty** is "an investment firm authorised in accordance with Directive 2004/39/EC, a credit institution authorised in accordance with Directive 2006/48/EC, an insurance undertaking authorised in accordance with Directive 73/239/EEC, an assurance undertaking authorised in accordance with Directive 2002/83/EC, a reinsurance undertaking authorised in accordance with Directive 2005/68/EC, a UCITS and, where relevant, its management company, authorised in accordance with Directive 2009/65/EC, an institution for occupational retirement provision within the meaning of Article 6(a) of Directive 2003/41/EC and an alternative investment fund managed by AIFMs authorised or registered in accordance with Directive 2011/61/EU.

**FIRDS** is a reference data system - currently being developed - for the purpose of collecting, in an efficient and harmonised manner, data covering all Financial Instruments falling within the extended scope of the MiFID II Directive. This system will establish data flows between ESMA, competent national authorities and some 300 trading platforms across the European Union.

**Fundamental data** refers to information on the capacity and utilisation of power or natural gas generation, storage, consumption and transmission units and the use of LNG facilities, including planned and unplanned plant outages.

**Information** is

- a) information to be made public in accordance with Regulations (EC) No 714/2009 and (EC) No 715/2009, in particular the guidelines and network codes adopted under these Regulations;
- b) information concerning the capacity and use of facilities for the generation, storage, consumption or transmission of electricity or natural gas, or information relating to the capacity and use of LNG facilities, including the scheduled or unscheduled unavailability of such facilities;
- c) information which must be disseminated in accordance with legal or regulatory provisions at the EU or national level, with market rules and contracts or customs in force on the wholesale energy market in question; to the extent that, if made public, such information would be likely to have a significant influence on the prices of wholesale energy products;
- d) any other information that a reasonable market participant would be likely to use in making a decision to enter into a transaction or trade a wholesale energy product.

**Insider dealing** is a transaction, prohibited by article 3 of Regulation 1227/2011, directly or indirectly in connection with a wholesale energy product carried out by one or more persons holding inside information.

**Inside information** is information of a precise nature which has not been made public, which relates, directly or indirectly, to one or more wholesale energy products and which, if it were made public, would be likely to significantly affect the prices of those wholesale energy products. (Source: Section 2 (1) of Regulation 1227/2011)

**Joint Allocation Office (JAO)** is the organisation which coordinates transmission rights auctions across the 27 European borders on behalf of 20 transmission system operators.

**Market manipulation**

- a) the act of effecting any transaction or issuing any order for wholesale energy products that:
  - (i) gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products;
  - (ii) secures or attempts to secure, by a person, or persons acting in collaboration, the price of one or several wholesale energy products at an artificial level, unless the person who entered into the transaction or issued the order to trade establishes that his reasons for doing so are legitimate and that that transaction or order to trade conforms to accepted market practices on the wholesale energy market concerned; or
  - (iii) employs or attempts to employ a fictitious device or any other form of deception or contrivance which gives, or is likely to give, false or misleading signals regarding the supply of, demand for, or price of wholesale energy products;

or

- b) disseminating information through the media, including the internet, or by any other means, which gives, or is likely to give, false or misleading signals as to the supply of, demand for, or price of wholesale energy products, including the dissemination of rumours and false or misleading news,

where the disseminating person knew, or ought to have known, that the information was false or misleading;

- c) When information is disseminated for the purposes of journalism or artistic expression, such dissemination of information shall be assessed taking into account the rules governing the freedom of the press and freedom of expression in other media, unless:
- (i) those persons derive, directly or indirectly, an advantage or profits from the dissemination of the information in question; or
  - (ii) the disclosure or dissemination is made with the intention of misleading the market as to the supply of, demand for, or price of wholesale energy products;

Source: Section 2 (2) of Regulation 1227/2011)

**Market participant**, any person, including transmission system operators, who enters into transactions, including the issuing of orders, in one or more wholesale energy markets.

**Non-Financial Counterparty** is an undertaking established in the Union other than the entities referred to in points (1) and (8) of Regulation 648/2012.

**Organised trading facility (OTF)** is a multilateral system, other than a regulated market or MTF, in which multiple buying and selling interests expressed by third parties for bonds, structured financial products, emission quotas or derivatives may interact in a way that leads to the conclusion of contracts in accordance with Title II relating to authorisation and operating conditions for investment firms (Article 4 (23) of Directive 2014/65/EU).

**PRISMA** (European Capacity Platform) is, since 1 January 2013, the European natural gas transmission capacity reservation platform enabling TSOs and shippers to auction off the transmission gas capacity at the primary and secondary market level (CAM network code). PRISMA's shares are held by 35 European TSOs from 15 countries.<sup>196</sup> According to Article 6 of 1348/2014, PRISMA is considered as an OMP and is registered as RMM for secondary capacity transactions<sup>197</sup>. On the primary market, transactions are reported by TSOs or an RRM. PRISMA follows the auction schedule set by ENTSO-G.

**Regional Security Coordinators (RSCs)** are entities (CORESO, TSCNET Services and CSC) set up by the TSOs to assist them in their tasks of maintaining the operational security of the electricity system, without being limited to national borders.

**Regulated market (RM):** a multilateral system, operated and/or managed by a market operator, which ensures or facilitates the meeting - within the market operator and in accordance with its non-discretionary rules - of multiple buyer and seller interests expressed by third parties for Financial Instruments, in a manner which leads to the conclusion of contracts for Financial Instruments admitted to trading under its rules and/or systems, and which is authorised and operates regularly in accordance with Section III on regulated markets (Article 4 (14) of Directive 2004/39/EC).

**Systematic internaliser** is an investment firm that trades on its own account in an organised, frequent and systematic manner when executing client orders outside a regulated market, MTF or OTF, without operating a multilateral system.

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<sup>196</sup> Other European countries have chosen other solutions for the time being. Poland, for example, has developed its own platform for reserving transport capacity.

<sup>197</sup> <https://corporate.prisma-capacity.eu/press-releases/remit-reporting-service-to-be-launched-by-prisma/>.

**Trade Repository** is a legal entity approved by the FSMA, on behalf of financial and non-financial companies, which collects and keeps records relating to derivatives on a centralised basis. This requirement is intended to increase the transparency of the derivatives market in the context of EMIR.

**Trading platform**, a regulated market, MTF or systematic internaliser acting as such and, where appropriate, a system outside the Community with functions similar to a regulated market or MTF (Article 2 (8) of Regulation (EC) No 1287/2006).

**Wholesale energy products**, the following contracts and derivatives, irrespective of where and how they are traded:

- a) contracts for the supply of electricity or natural gas where delivery is in the Union;
- b) derivatives relating to electricity or natural gas produced, traded or delivered in the Union;
- c) contracts relating to the transportation of electricity or natural gas in the Union;
- d) derivatives relating to the transportation of electricity or natural gas in the Union.

Contracts for the supply and distribution of electricity or natural gas for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity greater than the threshold set out in the second paragraph of point (5) shall be treated as wholesale energy products.

Source: Section 2 (4) of Regulation 1227/2011)

**Wholesale energy market** means the market in the EU where electricity and gas are traded (purchased and sold) before being delivered on the network to final customers.

**Winter Package** or "**Clean Energy for All Europeans**" is available at:

<https://ec.europa.eu/energy/en/news/commission-proposes-new-rules-consumer-centred-clean-energy-transition>.

It consists of a series of proposals aimed at reorganising the energy market, particularly the renewable energy market, in order to meet the commitments made by signing the Paris climate agreement<sup>198</sup> and putting the European consumer at the centre of this European project.

The package presented consists of the revision of eight pieces of Community legislation relating to:

- 1) new rules for the wholesale market that will result in the amendment of Regulation 714/2009;
- 2) new provisions in terms of retail sales, with the aim of amending the Electricity Directive 2009/72/EC;
- 3) new tasks assigned to ACER that will require changes to Regulation 713/2009;
- 4) tools to be put in place to prevent, prepare and manage electricity crisis situations. A new Regulation needs to be drafted;
- 5) the promotion of energy from renewable sources, which will require the recast of Directive 2009/28/EC;
- 6) the governance of the Energy Union (new Regulation<sup>199</sup>);

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<sup>198</sup> <http://www.europaforum.public.lu/fr/actualites/2016/11/comm-energie-paquet/index.html>.

<sup>199</sup> Proposal for a Regulation amending Directive 94/22/EC, Directive 98/70/EC, Directive 2009/31/EC, Regulation (EC) No 663/2009, Regulation (EC) No 715/2009, Directive 2009/73/EC, Council Directive 2009/119/EC, Directive 2010/31/EC, Directive 2012/27/EU, Directive 2013/30/EU and Council Directive 2015/652 (EU), and repealing Regulation (EC) No 525/2013.

- 7) energy efficiency, which will require amendments to Directive 2012/27/EU;
- 8) the energy performance of buildings leading to the amendment of Directive 2010/31/EU.

The WP recommendations are expected to be adopted in 2017 for entry into force between 2020 and 2021.

## 5.2. LIST OF ABBREVIATIONS

<b>ACER</b>	Agency for the Cooperation of Energy Regulators operational since 3 March 2011 (713/2009)
<b>AGSI+</b>	Aggregated Gas Storage Inventory
<b>AIM</b>	Availability Information Management
<b>ALSI</b>	Aggregated LNG Storage Inventory
<b>AMF</b>	Autorité des marchés financiers (Financial Markets' Authority - France)
<b>AMP</b>	Accepted Market Practice
<b>APA</b>	Approved Publication Arrangement
<b>API</b>	Application Programming Interface
<b>APX</b>	Amsterdam Power Exchange
<b>APX-ENDEX</b>	currently the <b>ICE - ENDEX</b> Intercontinental Exchange
<b>ARIS</b>	ACER REMIT Information System
<b>ARM</b>	Approved Reporting Mechanism
<b>ARP</b>	Access Responsible Party, which has concluded an ARP contract with the TSO Elia
<b>BCA</b>	Belgian Competition Authority
<b>bcm</b>	billion cubic meters
<b>BE</b>	Belgium
<b>BoR</b>	Board of Regulators (ACER)
<b>CA</b>	Competent Authority
<b>CACM</b>	Capacity Allocation and Congestion Management
<b>CAM</b>	Capacity Allocation Mechanism (gas)
<b>CASC</b>	Capacity Allocating Service Company, namely an allocating platform for the auction of cross-border electricity transmission capacities for the CWE and CSE regions, the north of Switzerland and part of Scandinavia (jao.eu)
<b>CCP</b>	Central counterparty
<b>CD</b>	Commodity Dealer
<b>CEER</b>	Council of European Energy Regulators
<b>CEREMP</b>	Centralised European Registry for Energy Market Participants
<b>CEREP</b>	Central Ratings Repository
<b>CFR</b>	Code of Federal Regulations (USA)

<b>CI Br</b>	Clearing Broker
<b>CMP</b>	Congestion Management Procedures (gas)
<b>CNMC</b>	Comisión Nacional de los Mercados y la Competencia (Spanish regulator)
<b>CNOTs</b>	Common Network Operation Tools
<b>Commission</b>	European Commission
<b>CRD</b>	Capital Requirements Directive
<b>CRE</b>	Commission de régulation de l'énergie (Energy Regulation Commission - France)
<b>CREG</b>	Commission de Régulation de l'Electricité et du Gaz - Commission for the Regulation of Electricity and Gas
<b>CREOS</b>	Creos Luxembourg S.A. is the owner and operator of electricity networks and natural gas pipelines in Luxembourg
<b>CRR</b>	Capital Requirements Regulation
<b>CSMAD</b>	Criminal sanctions for market abuse Directive
<b>CTP</b>	Consolidated Tape Provider
<b>DAM</b>	Day-ahead market, part of the spot market where a commodity is tradable one day before delivery
<b>Dodd-Frank</b>	The Dodd-Frank Act, adopted on 21 July 2010, is the main legislative component of the reform of the US financial market following the subprime crisis and the ensuing financial and economic crisis.
<b>DTMI</b>	Declared Total Maximum Inventory (LNG Storage Capacity)
<b>DTRS</b>	Declared Total Reference Send-out (Send-out Capacity)
<b>EBA</b>	European Banking Authority
<b>EC</b>	European Commission
<b>ECA</b>	European Competition Authority
<b>ECB</b>	European Central Bank
<b>ECN</b>	European Competition Network which brings together the National Competition Authorities <b>(NCA)</b>
<b>ECN</b>	European Competition Network
<b>EEA</b>	European Economic Area
<b>EEOTC</b>	Economical Equivalent Over the Counter
<b>EEX</b>	European Energy Exchange
<b>EIOPA</b>	European Insurance and Occupational Pensions Authority
<b>EMFIP</b>	Electricity Market Fundamental Information Platform <b>(ENTSO-E)</b>

<b>EMIR</b>	European Market Infrastructure Regulation, pertaining to over-the-counter products ( <b>OTC</b> ), central counterparties and trade repositories (648/2012)
<b>ENTSO</b>	European Network of Transmission System Operators for electricity ( <b>ENTSO-E</b> ) and gas ( <b>ENTSO-G</b> )
<b>EPAct</b>	Energy Policy Act of 2005
<b>ERGEG</b>	European Regulators' Group for Electricity and Gas
<b>ESA</b>	European Supervisory Authority ( <b>EBA, EIOPA, ESMA</b> )
<b>ESFS</b>	European System of Financial Supervision
<b>ESMA</b>	European Securities and Markets Authority
<b>ESRB</b>	European Systemic Risk Board
<b>ETD</b>	Exchange Traded Derivatives
<b>ETRM</b>	Energy Trade risk management
<b>EUPHEMIA</b>	"Pan-European Hybrid Electricity market integration algorithm ", an algorithm chosen for the PCR initiative
<b>FBMC</b>	Flow-Based Market Coupling
<b>FC</b>	Financial Counterparty
<b>FERC</b>	Federal Energy Regulatory Commission - USA
<b>FG</b>	Framework Guidelines
<b>FI</b>	Financial Instrument
<b>FIRDS</b>	Financial Instruments Reference Data System
<b>FMA</b>	Financial Market Authority
<b>FSMA</b>	Financial Services and Markets Authority
<b>GIE</b>	Gas Infrastructure Europe which groups together 3 infrastructure activities GTE, GLE and GSE
<b>GLE</b>	Gas LNG Europe
<b>GSE</b>	Gas Storage Europe
<b>GTE</b>	Gas Transmission Europe
<b>IA</b>	Implementing Acts
<b>IASB</b>	International Accounting Standards Board
<b>ICE</b>	Intercontinental Exchange
<b>IFRS</b>	International Financial Reporting Standards
<b>IGCC</b>	International Grid Control Cooperation
<b>IP</b>	Interconnection Point

<b>ISDA</b>	International Swaps and Derivatives Association
<b>ISP</b>	Investment Services Provider
<b>JAO</b>	Joint Allocation Office (formerly <b>CASC</b> )
<b>LNG</b>	Liquefied Natural Gas
<b>LSO</b>	LNG System Operator
<b>MAD</b>	Market Abuse Directive
<b>MAR</b>	Market Abuse Regulation
<b>MCR</b>	Multi-Regional Coupling
<b>MIF II</b>	MiFID II and MiFIR
<b>MIF</b>	Markets in Financial Instruments
<b>MiFID</b>	Markets in Financial Instruments Directive. MiFID II (2014/65/EU) will replace MiFID I (2004/39/EC) on 3 January 2018
<b>MMC</b>	Market Monitoring Committee
<b>MoP</b>	Manual of Procedures ( <b>ACER</b> )
<b>MoU</b>	Memorandum of Understanding
<b>MP</b>	Market participant
<b>MS</b>	Member State
<b>MTF</b>	Multilateral Trading Facilities
<b>NBB</b>	The National Bank of Belgium
<b>NC</b>	Network Codes
<b>NCA</b>	National Competition Authority
<b>NCA</b>	National Competent Authorities
<b>NFC</b>	Non-Financial Counterparty
<b>NRA</b>	National Energy Regulatory Authorities
<b>OJ</b>	Official Journal of the European Union
<b>OMP</b>	Organised Marketplace
<b>OTC</b>	Over-the-counter or off-exchange
<b>OTF</b>	Organised Trading Facilities
<b>PCR</b>	Price Coupling of Regions
<b>PPAT</b>	Persons Professionally Arranging Transactions
<b>Q&amp;A</b>	Questions and Answers
<b>RACI</b>	Responsibility Accountability Consult Inform

<b>REMIT</b>	Regulation on wholesale Energy Market Integrity and Transparency (Regulation 1227/2011)
<b>RM</b>	Regulated Market
<b>ROC</b>	Regional Operational Center
<b>RRM</b>	Registered Reporting Mechanism – reporting entity designed to transmit REMIT data to ACER
<b>RSC</b>	Regional Security Coordinator
<b>RTE</b>	Réseau de transport d'électricité (Electricity Transmission Network in France)
<b>RTS / ITS</b>	regulatory technical standards and implementing technical standards
<b>SEE</b>	Single Economic Entity
<b>SFTP</b>	Secure File Transfer Protocol
<b>SFTR</b>	Securities Financing Transactions Regulation
<b>SI</b>	Systematic Internaliser
<b>SRE</b>	Sources of renewable energy
<b>SSO</b>	Storage System Operator
<b>STOR</b>	Suspicious Transaction and Order Report
<b>STR</b>	Suspicious Transaction Report
<b>TC</b>	Trade Repository
<b>TEU</b>	Treaty on the European Union
<b>TFEU</b>	Treaty on the Functioning of the European Union
<b>TMS</b>	Trade Matching Systems
<b>TR</b>	Trade Repository registered under Regulation (EU) N° 648/2012
<b>Trade Data</b>	transaction including orders to trade
<b>TRUM</b>	Transaction Reporting User Manual (ACER)
<b>TSO</b>	Transmission System Operator
<b>UMM</b>	Urgent Market Message
<b>WEP</b>	Wholesale Energy Products
<b>WP</b>	Winter Package, generic name given to the "Package" consisting of the revision of eight pieces of Community legislation entitled "Clean Energy for All Europeans"

### 5.3. SUMMARY DESCRIPTION OF THE GAS AND ELECTRICITY MARKETS

Figure 18 gives a simplified overview of the traditional value chain of the energy markets for gas and electricity by distinguishing between physical energy flows on the one hand and financial and contractual wholesale market flows on the other.

#### Physical energy flows

Upstream of this chain, for electricity, energy is generated via power stations, plus imported electrical energy, and for gas, there is import via imported gas (via pipeline or ship), since Belgium has no natural gas deposits.

Between the two extremes of the chain - generation/imports on the one hand and consumption on the other - is transmission and distribution, both of which allow energy to be delivered to the final consumer. Their role is to ensure a permanent balance between generation/imports and consumption. These monopolistic and therefore regulated activities are provided by the companies Elia (electricity) and Fluxys (gas) as regards transmission, and through various distributors as regards distribution. Transmission and distribution tariffs are approved by regulators, the CREG for transmission and the VREG, CWaPE and Bruegel for distribution.

At the end of the chain is consumption, with the supply ensuring that the costs of the entire chain are covered<sup>200</sup>. It is this segment that has been the main focus of the liberalisation of the electricity and gas market in Europe. As regards the electricity market, participants without power plants have appeared on the market to attract customers. This led to the development of a wholesale market.

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<sup>200</sup> Losses on the networks are not taken into account in this very short presentation.



Figure 18: simplified overview of the traditional value chain of the energy markets for gas and electricity: physical energy flows and financial and contractual flows.  
Source: CREG

The CREG website provides additional information on the main market players listed in the above figure at <http://www.creg.be/fr/consommateurs/le-marche-de-lenergie/qui-fait-quoi-sur-le-marche-de-lenergie>.

### The financial & contractual flows of the wholesale market

The market on which energy is purchased and/or sold before being delivered to final consumers on the network is called the wholesale market.

The different types of energy markets are organised sequentially and are sometimes negotiated years before actual delivery. Physical energy is negotiated to meet the energy needs of consumers. However, transactions may also use derivatives, including forwards, futures, options and swaps, with the aim of reducing inherent market risks through hedging.

- Forwards and futures

The forwards and futures markets cover a range of products from several years to the day before delivery. Forwards and futures are contracts that allow a given amount of energy to be supplied later on for a set period of time at an agreed price. Futures are standardised contracts that can then be traded on energy exchanges. Forwards are mainly traded bilaterally over-the-counter, and are not standardised, giving more flexibility to the parties concerned; they are usually not traded on exchanges.

Electricity producers and gas importers sell their energy, among other things, on forwards and futures markets to secure their subsequent sales and reduce their vulnerability to possible decreases in energy prices. Conversely, large (industrial) energy consumers buy, inter alia, their energy from forwards and futures markets, directly or through brokers or traders on their behalf, in order to secure their future energy consumption at fixed prices and thus reduce their vulnerability to possible increases in energy prices.

In order to transport energy between different trading platforms (which cover the delivery of energy in different regions in Europe), transmission capacity between these bidding zones (electricity) or marketplaces (gas) is used. The allocation of this transmission capacity on the forwards and futures markets is done by separate negotiation of the energy component: the right to use transmission capacity between two bidding zones (electricity) or marketplaces (gas) is bought before (or simultaneously) with the purchase or sale of energy in the other bidding zone (electricity) or marketplace (gas). No transmission capacity is taken into account if trading is carried out within a single zone (electricity) or on a single marketplace (gas).

- Spot products

In the day-ahead market, energy is traded one day before actual delivery. The day-ahead market is of paramount importance since its market results serve as a benchmark for most forwards and futures contracts, both those traded on energy exchanges and those traded on the OTC market. Energy can be traded bilaterally the day before (OTC trading) or on the day-ahead exchange.

For the intra-day market, energy is traded for same-day delivery. The intra-day market allows market participants to correct any changes in their day-ahead generation or withdrawal schedules.

#### The CREG website

The purpose of this annex is to provide a highly summarised picture of the gas and electricity markets. For further information, the CREG website <http://www.creg.be> contains studies, notes, reports and opinions on gas and electricity markets, including the following documents:

- dashboard, computer graphics and international rating<sup>201</sup>;
- annual report of the CREG<sup>202</sup>;
- study on the functioning and price evolution of the Belgian wholesale electricity market – monitoring report<sup>203</sup>;
- note on significant developments in the wholesale markets for electricity and natural gas<sup>204</sup>;
- joint report on developments in the electricity and natural gas markets in Belgium<sup>205</sup>.

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<sup>201</sup> <http://www.creg.be/fr/professionnels/fonctionnement-et-monitoring-du-marche/tableau-de-bord-infographies-et-note>.

<sup>202</sup> <http://www.creg.be/fr/publications/rapport-annuel-ar2016>.

<sup>203</sup> <http://www.creg.be/fr/publications/etude-f160526-cdc-1513>.

<sup>204</sup> <http://www.creg.be/fr/publications/note-z1601>.

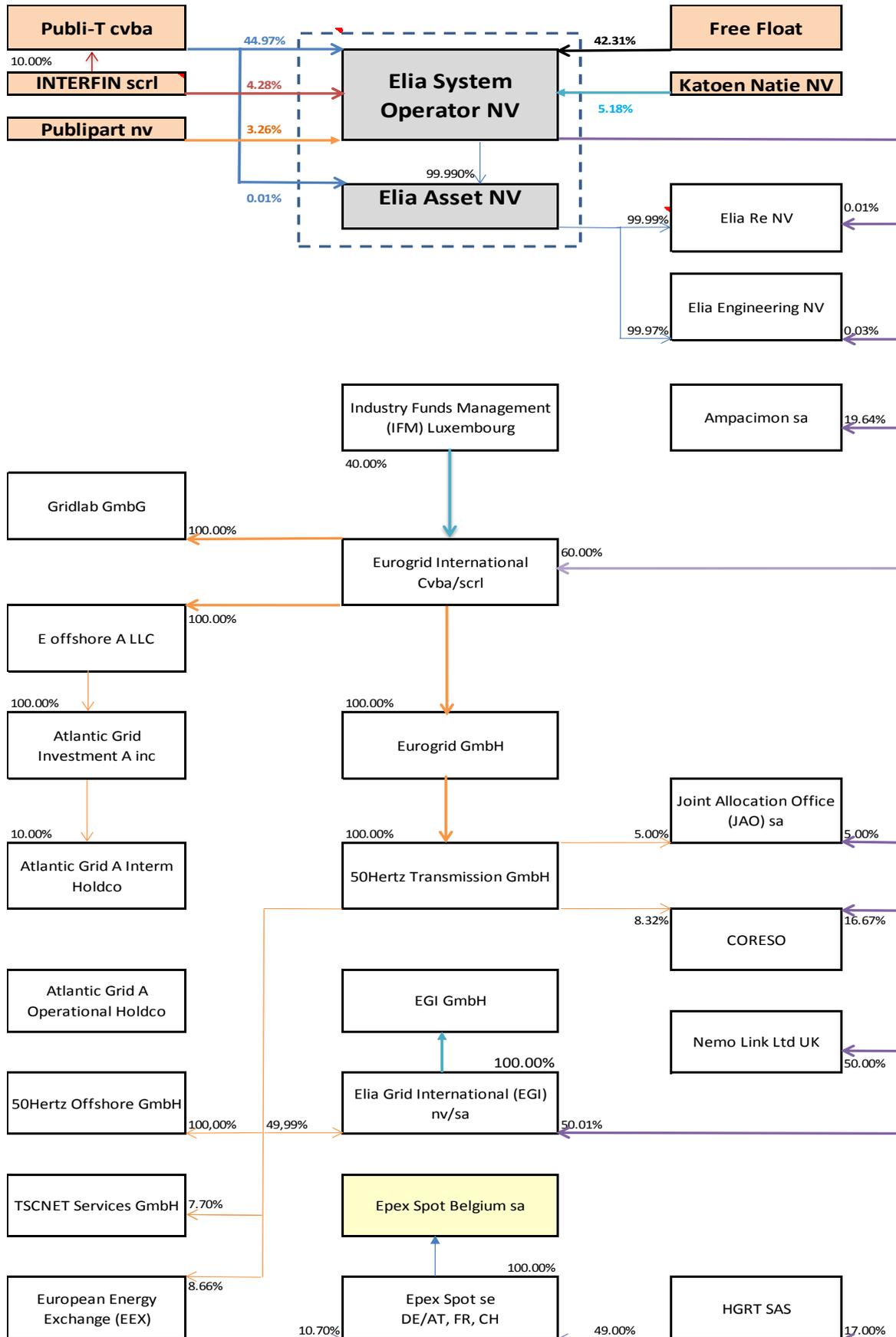
<sup>205</sup> <http://www.creg.be/fr/publications/rapport-div-20160707>.

5.4.

FLUXYS GROUP ORGANISATIONAL CHART AS OF 31-12-2016

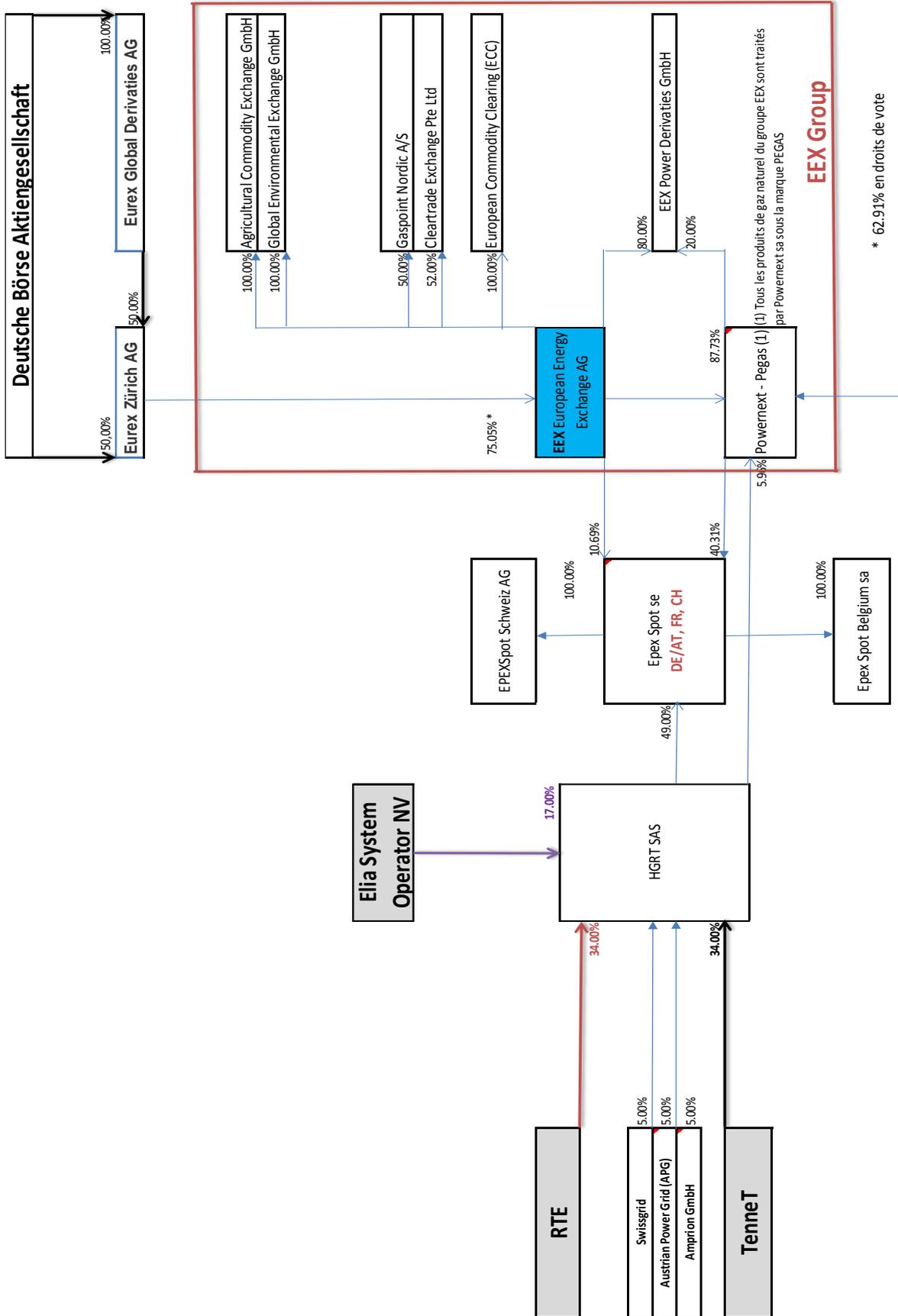


## 5.5. ELIA GROUP ORGANISATIONAL CHART AS OF 31-12-2016



5.6.

EEX GROUP ORGANISATIONAL CHART AS OF 31-12-2016



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