

ACER public consultation on the definition of inside information

A Eurelectric response paper

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:

- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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Question 1: What are your experiences so far regarding the assessment of inside information that you have possessed? Which criteria do you apply for the assessment for the disclosure of inside information?

Please describe your assessment of whether an information is to be considered an inside information. Please describe the process step by step including the tools used and the participants involved.

a) Has the unavailable capacity concerned by an outage of a production unit been a criteria in your assessment of REMIT inside information?

Please provide detailed reasoning including the methodology to set your threshold(s).

Eurelectric still very much supports the fact that a sector-specific regulatory framework on transparency and market integrity is in place for wholesale energy markets. Wholesale energy products and financial instruments have intrinsic different characteristic. Therefore, we attach the greatest importance to the fact that inside information under REMIT maintains the necessary specificities compared to the Market Abuse Regulation (MAR). Against this background we welcome the current consultation on the definition of inside information under REMIT.

We encourage at the same time the cooperation, for the common requirements set by both the regulations, between energy market and financial market regulators to ensure a consistent approach. The current Art. 16 REMIT on cooperation between energy regulators, respectively, the current Art. 25 MAR on cooperation between financial market regulators and cooperation between ACER and ESMA could serve as an example.

With specific reference to the public disclosure of inside information, Eurelectric believes that the establishment of respective thresholds should be considered in the REMIT legal framework (or in ACER Guidance document) both for electricity and gas markets in order to facilitate an easier identification of information relevant to the notion of inside information. More specifically, we would welcome the introduction of one single threshold for power (as European power markets are well intergrated nowasays). As regards gas, we recognize that there may be still more relevant regional differences which could justify a differentiated approach with thresholds that vary on a regional basis.

In conclusion, it would be useful to set official thresholds below which an information is not considered as an inside information; this would simplify inside information management (see our answer to question 6) and the quality of information collected for this purpose.

On the question asked, Eurelectric would answer positively. We note that member companies have adopted internal REMIT publication rules providing for indicative publication thresholds.

In order to internally assess the inside information related to outages, energy companies in particular refer to the definition of REMIT (Art. 2) including the detailed in the Guidance provided by the Agency.

In particular, energy companies usually set internal indicative thresholds taking into consideration both the potential impact of an information on the prices of wholesale energy products and peers' approach as regards expectation on what should be disclosed as inside information.

b) If so, which amounts do you consider to be relevant and would apply as a threshold? Do those amounts vary depending on the relevant market situation?

Please provide a detailed reasoning. If there were changes in your methodology, please provide information in this regard as well.

We support the definition of safe harbour thresholds for REMIT publication on gas and electricity. Member companies have adopted internal publication thresholds for electricity. Based on current practice since 2011, for power markets 100 MW seems to be the value beyond which market participants publish information relating to changes in the availability of their power plants to comply with the provisions of art. 4.1 REMIT, and to identify events which, according to the REMIT Regulation, could probably significantly influence the prices of wholesale energy products. The 100 MW threshold is also referred to in the REMIT Guidance and is consistent with transparency obligations under Regulation EU N ° 714/2009.

c) Do you apply any further thresholds for other kinds of inside information?

Please elaborate.

Member companies apply different thresholds for gas and electricity activities

Question 2: Which criteria do you apply for using inside information disclosed by other market participants for decisions to enter into a transaction relating to, or to issue an order to trade in a wholesale energy product?

Please describe the decision making process in detail including the reasoning involved.

Market participants usually take into account and use inside information disclosed by other market participants. In particular,

- generally, when inside information is published, it becomes part of the data that market participants use as own trading/commercial strategy, based on a case by case assessment of the supply, demand and the prices;
- it also happens that, specifically in relation to major gas assets, when inside information is published, market participants act on the market as to “respond” and adjust to the announced modified structural situation (i.e. in gas transportation availability).

Question 3: Do you distinguish between inside information relating to the electricity and gas markets, or do you apply one general threshold which covers both electricity and gas markets?

If applying different thresholds, what do you base your decision on (key factors)?

Yes there is a distinction between both electricity and gas markets.

For electricity, as described before, we would propose a single threshold of 100MW.

For gas, a single threshold would also be desirable. For the time being it could be argued that EU gas markets are not so close interconnected yet compared to the power markets. Thus a few

different regional thresholds for well interconnected areas could be an approach. As regards to the threshold itself specific analysis may be required taking into account already existing thresholds such as 5mcm/day (approx. 55 GWh/day) which is the value of the indicative threshold already in place in Norway. A quantitative assessment could be helpful.

Question 4: Do you take into account and distinguish between geographical peculiarities or different markets or is your decision based on different amounts of capacity?

Please elaborate and provide reasons for your proposals:

See question 3

Question 5: Are the thresholds that already exist within the framework of the transparency regulation a factor you take into consideration in your assessment of inside information?

Please elaborate and provide reasons for your proposals:

Yes. And we believe that these should also serve as the relevant threshold as regards insider information (e.g. 100MW for the electricity market).

Question 6: Would you propose amendments to the existing legal framework regarding the disclosure of inside information?

Please elaborate and provide reasons for your proposals:

Eurelectric welcomes the consultation on the definition of inside information under REMIT, and the fact that a sector-specific regulatory framework is in place for wholesale energy markets. Wholesale energy products and financial instruments have intrinsic different characteristics, therefore we attach the greatest importance to the fact that inside information under REMT maintains the necessary specificities compared to the Market Abuse Regulation (MAR).

We encourage at the same time the cooperation, for the common requirements set by both the regulations, between energy market and financial market regulators to ensure a consistent approach to the same market abuse cases under REMIT and MAR. The current Art. 16 REMIT on cooperation between energy regulators, respectively, the current Art. 25 MAR on cooperation between financial market regulators and cooperation between ACER and ESMA could serve as an example.

With specific reference to inside information, we believe that also the following elements should be taken into consideration for an overall improvement of the legal framework for REMIT.

a) Publication of inside information via central platforms (IIPs)

Inside information is currently published on some central platforms (e.g., EEX transparency platform) and/or firms' websites.

The publication of inside information by market participants via (central) Inside Information Platforms ("IIPs") as indicated by ACER in its 4th Guidance Document would guarantee in our view a major improvement, and ensure a harmonized, timely and efficient publication of inside

information. We can see that the usage of a few regional such IIP platforms can be a pragmatic approach already. IIPs should be registered with ACER subject to a defined set of conditions, e.g., compliance with standards in terms of availability and with ACER's standards for publication of inside information (in particular data quality). IIPs should not impose technical burdens other than what is prescribed by ACER.

Finally, we see that companies own publication platforms can still serve as back-up solution (i.e. to ensure certainty in case of outages of the IIPs), while of course fulfilling the requirements laid out by ACER in its Guidance.

In conclusion, we strongly support the idea of making the disclosure of inside information mandatory on disclosure platforms, which is already the default solution indicated in the 4th Guidance document of ACER. These platforms should be wholly responsible and liable for:

- their systems availability and reliability;
- the quick publication of the information received from MPs;
- correspondence between the information received and published;

The aforementioned features should be certified by ACER.

b) Definition of minimum relevant amounts

Regarding the threshold topic, we would welcome a standardised approach to the introduction of mandatory thresholds, applicable to all EU Member States, which would improve the certainty of market participants about the disclosure obligation, which is so far too discretionary and not harmonized at EU-level

c) Consumption units and the obligation to disclose inside information

In addition to the threshold topic, it should be ensured that also consumption units proceed with the disclosure of inside information. In general terms, taking in account the size of the plants and the average daily consumption of the affected balancing areas, information related to big consumption units (i.e. plants with a technical consumption capacity higher than 600 GWh/y) could have a material effect on prices.

d) Obligation to disclose inside information by TSOs, LSOs and SSOs and DSOs

The current definition of market participant includes TSOs but not SSOs and LSOs and DSOs. These entities, despite usually not entering into wholesale transactions, can possess information that could be inside information, and that under the current requirements are not obliged to disclose or publish. We therefore suggest the inclusion of SSOs and LSOs and DSOs in the definition of Market Participants as to subject them to the disclosure obligation on inside information even if they don't enter into wholesale transactions.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability



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