

## **French national energy regulator's response to DG FISMA's Targeted Public Consultation on the Review of the Functioning of Commodity Derivatives Markets and Certain Aspects Relating to Spot Energy Markets**

### **EXECUTIVE SUMMARY**

The French national energy regulator (*Commission de Régulation de l'Énergie* - CRE) is pleased to provide input to the DG FISMA public consultation on commodity derivatives markets (hereinafter, the 'Consultation').

With extensive experience in wholesale energy market surveillance, which has started even before the REMIT<sup>1</sup> came into force, CRE has been actively involved in REMIT data collection since 2015, using the data for French market surveillance purposes. CRE regularly publishes reports to enhance and to promote market transparency and provide a comprehensive understanding of market operations<sup>2</sup>. Moreover, CRE has a significant experience in conducting investigations on energy market abuses, with several cases leading to sanction decisions.

Given this background, CRE is well-placed to offer valuable insights for the Consultation, particularly on topics related to data aspects, exposure reporting under REMIT, and enhanced supervisory cooperation within the energy sector. CRE is at the European Commission's disposal to further elaborate on its positions and experiences in wholesale energy market monitoring.

Commodity derivatives are crucial instruments for energy sector market participants to mitigate exposure risks, and their effective operation is necessary to the smooth functioning of the energy market as a whole. CRE has consistently considered the oversight of derivative markets as an integral component of the energy sector regulation. Given the important role that energy derivatives play within wholesale energy markets due to their close interlinkage in electricity and gas price formation, separating their oversight from physical market components would compromise market monitoring effectiveness. Consequently, CRE welcomed the recent revision of REMIT which suppressed an important loophole in energy markets surveillance by extending NRAs supervision and sanction powers to wholesale energy products which are also financial instruments.

CRE supports responses provided by CEER<sup>3</sup> and ACER<sup>4</sup> to this Consultation and emphasizes that financial and energy markets are regulated and supervised from distinct perspectives. Indeed, this distinction prompted the creation of REMIT, a tailor-made regulatory framework designed to address the specific needs of EU energy markets and their participants. Both financial regulation and REMIT, even though they are distinct, are complementary, ensuring the efficient functioning of electricity and gas wholesale markets. The dual oversight on energy derivatives markets is not problematic in itself. In this context, it is worth to recall that the REMIT reform has further enhanced the cooperation between energy

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<sup>1</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, revised by (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market.

<sup>2</sup> Among these publications, could be noted the annual monitoring report on French wholesale electricity and gas markets and, where relevant, CRE also publishes specific analyses focusing on distinct market situations, for instance on trading behaviors and electricity futures prices for winter 2022-2023 and the year 2023 during the recent energy crisis.

<sup>3</sup> Council of European Energy Regulators

<sup>4</sup> Agency for the Cooperation of Energy Regulators

regulators, financial authorities, ACER and ESMA<sup>5</sup>, resulting in a streamlined and robust framework. The complementary nature of energy and financial regulations, along with the efficiency of the cooperation framework shown to date, underscores the value of continued improvements in coordination for effective market regulation.

CRE considers that the present regulatory framework, as reinforced by the recent reform of REMIT, is effective. There is no need to complicate the regulatory market monitoring landscape by establishing new administrative entities. Therefore, CRE supports all initiatives that enhance cooperation between energy regulators and financial authorities, without additional centralized administrative layers, in compliance with the principle of subsidiarity and each sector specificities.

Energy price formation is the primary focus of energy market monitoring, with both wholesale energy products and financial instruments contributing to this process. It is crucial for the energy regulators to have access to comprehensive and quality data in order to effectively oversee market dynamics, ensure fair price formation and maintain market integrity. REMIT data is currently the most extensive dataset on trades and orders for energy products, and already centralized efficiently by ACER. Therefore, ACER is the best placed entity to consolidate all the data concerning energy markets and products reported under REMIT and financial regulation. In support to this, it is relevant to remind that under the revised REMIT, ACER is considered as a centralized data entity and for this reason is required to develop a data Reference Centre offering a public, common platform for access to wholesale energy market data.

Before considering any structural changes affecting wholesale energy market functioning or corresponding reporting obligations, CRE advocates for thorough impact assessments to evaluate cost-benefit balances and potential added value.

The recent energy crisis prompted the European Commission to introduce several reform initiatives, including the REMIT framework revamping. With the implementation of the revised REMIT as of May 2024, CRE sees no urgent need to make further changes to the recently enhanced framework or to impose additional obligations on energy companies. CRE supports the full implementation of recent energy market reforms prior to considering new legislation. Market stability is crucial for maintaining market participants' confidence and fostering investment in European wholesale energy markets. Regulators need to implement and assess recent changes effectively, focusing on diligent market monitoring rather than continuous legislative shifts<sup>6</sup>. Frequent legislation changes could undermine confidence, deter investment, and jeopardize supply security.

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<sup>5</sup> European Securities and Markets Authority

<sup>6</sup> For instance, the ongoing reform of the REMIT Implementing Regulation, while crucial, has resulted in costly and time-consuming changes for all involved parties.