REMIT in the Energy Community

ECRB Procedural Act

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Cooperation at the Energy Community level (1)

1. The Agency, Energy Community Regulatory Board shall aim to ensure that national regulatory authorities carry out their tasks under this Regulation in a coordinated and consistent way.

The Agency shall publish non-binding guidance on the application of the definitions set out in Article 2, as appropriate.

National regulatory authorities shall cooperate with the Agency and with each other, including at regional level via the Energy Community Regulatory Board for the purpose of carrying out their duties in accordance with this Regulation.

National regulatory authorities; competent financial authorities and the national competition authority in a Member State Contracting Party may establish appropriate forms of cooperation in order to ensure effective and efficient investigation and enforcement and to contribute to a coherent and consistent approach to investigation, judicial proceedings and to the enforcement of this Regulation and relevant financial and competition law.
2. National regulatory authorities shall without delay inform the Agency—Energy Community Regulatory Board and the Secretariat in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Contracting Party Member State or in another Contracting Party Member State.

Where a national regulatory authority suspects that acts which affect wholesale energy markets or the price of wholesale energy products in that Contracting Party Member State are being carried out in another Contracting Party Member State, it may request the Agency—Energy Community Regulatory Board and the Secretariat to ensure that the requirements of this Regulation are implemented in such Contracting Party take action in accordance with paragraph 4 of this Article and, if the acts affect financial instruments subject to Article 9 of Directive 2003/6/EC, in accordance with paragraph 3 of this Article.
3. In order to ensure a coordinated and consistent approach to market abuse on wholesale energy markets:

(a) national regulatory authorities shall inform the competent financial authority of their Member State and the Agency where they have reasonable grounds to suspect that acts are being, or have been, carried out 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 that Directive; for these purposes, national regulatory authorities may establish appropriate forms of cooperation with the competent financial authority in their Member State;

(b) the Agency shall inform ESMA and the competent financial authority where it has reasonable grounds to suspect that acts are being, or have been, carried out 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 that Directive;

(c) the competent financial authority of a Member State shall inform ESMA and the Agency where it has reasonable grounds to suspect that acts in breach of Articles 3 and 5 are being, or have been, carried out on wholesale energy markets in another Member State;

(d) national regulatory authorities shall inform the national competition authority of their Member State, the Commission Secretariat and the Agency Energy Community Regulatory Board where they have reasonable grounds to suspect that acts are being, or have been, carried out on wholesale energy market which are likely to constitute a breach of competition law.
4. In order to carry out its functions under paragraph 1, where, inter alia, on the basis of initial assessments or analysis, the Energy Community Regulatory Board suspects that there has been a breach of this Regulation, it shall have the power to be entitled:

(a) to request one or more national regulatory authorities to supply any information related to the suspected breach;

(b) to request one or more national regulatory authorities to commence an investigation of the suspected breach, and to take appropriate action to remedy any breach found. Any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the national regulatory authority concerned;

(c) where it considers that the possible breach has, or has had, a cross-border impact, to establish and coordinate an investigatory group consisting of representatives of concerned national regulatory authorities to investigate whether this Regulation has been breached and in which Member State Contracting Party the breach took place. Where appropriate, the Agency—Energy Community Regulatory Board may also request the participation of representatives of the competent financial authority or other relevant authority of one or more Contracting Party and/or Member States in the investigatory group.
5. A national regulatory authority receiving a request for information under point (a) of paragraph 4, or receiving a request to commence an investigation of a suspected breach under point (b) of paragraph 4, shall immediately take the necessary measures in order to comply with that request. If that national regulatory authority is not able to supply the required information immediately, it shall without further delay notify the Energy Community Regulatory Board of the reasons.

By way of derogation from the first subparagraph, a national regulatory authority may refuse to act on a request where:

(a) compliance might adversely affect the sovereignty or security of the Member State addressed;
(b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the Contracting Party Member State addressed; or
(c) a final judgment has already been delivered in relation to such persons for the same actions in the Contracting Party Member State addressed.

In any such case, the national regulatory authority shall notify the Energy Community Regulatory Board Agency accordingly, providing as detailed information as possible on those proceedings or the judgment.

National regulatory authorities shall participate in an investigatory group convened in accordance with point (c) of paragraph 4, rendering all necessary assistance. The investigatory group shall be subject to coordination by the Energy Community Regulatory Board Agency.
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ECRB REMIT WG
1) establish the basis for coordination of NRAs in carrying out their tasks under the REMIT Regulation

2) define the process for cooperation via ECRB

3) harmonize the templates and formats used by the NRAs

4) outline the process for actions to be undertaken by ECRB, and

5) address confidentiality concerns in relation to data and information exchange
7/REMIT
monitor national markets cooperation via ECRB at regional level

16.2/REMIT
report to ECRB suspected breaches of REMIT in another CP

16.1/REMIT
ECRB to facilitate cooperation and coordination

16.4/REMIT
ECRB to assess such potential breach:
- request additional info form affected NRAs
- request NRA(s) to commence an investigation
- establish investigatory group of affected NRAs
Email to ECRB Section:
Nina.Grall@energy-community.org
Arben.Klokoqi@energy-community.org
Branislava.Marsenic@energy-community.org
fania.chen@energy-community.org

Phase 1: communication

Template 1

ECRB

Email

ECRB

President

REMIT WG

Phase 2: next steps
(3 weeks after Phase 1)

REMIT WG

No action

President

Propose to invite establishment of the investigation group

REMIT WG

Request info

Propose to request to NRA(s) commencement of investigation
NRA obliged to preserve confidentiality of information

ECRB procedural Act requires coordination and exchange of information, which may include also information that are confidential, commercially sensitive, business secrets, etc.

Upon exchange of such information, the ECRB, ECRB REMIT WG, including IG shall sign NDA

Reports by REMIT WG and IG may be tagged as confidential
NRAs to publish Template 3 as a mean through which market participants (and others) report suspected breaches

NRAs to ask PPAT to use such template as well

ECRB Section will publish to allow also reporting directly to ECRB

NRAs should also accept reporting/info on breaches that come via other means
Exemptions in line with Article 3.4 of REMIT shall be requested/ notified to NRAs – T4

Delay of publication in line with Article 4.2 of REMIT shall be requested/ notified to NRAs – T5

8/Use of exemption and delay of inside information
9/Registration of MP – national registry

Template 6 – for registration

Template 6 – for national registration
9/Registration of MP – central registry

REMIT corner at the Energy Community / ECRB page

Includes REMIT related documents, templates and central registry

Registry in excel format – developed based on national templates

Info by NRAs to be submitted on the format agreed (excel)
Full national registry submitted to ECRB Section (excluding confidential info)

ECRB to include the info on the central registry
THANK YOU
FOR YOUR ATTENTION

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