



**Energy Community Regulatory Board**

**REMIT**

**Enforcement and penalty regimes in  
the Contracting Parties**

**2024**

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# 1. INTRODUCTION

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## 1.1. About the Energy Community and the Energy Community Regulatory Board

The Energy Community<sup>1</sup> is an international organization established in 2005 to bring together the European Union and its neighbours to create an integrated pan-European energy market. The key objective of the Energy Community is to extend the EU internal energy market rules and principles to countries in South East Europe, the Black Sea region, and beyond, based on a legally binding frame. Currently, the Energy Community has nine Contracting Parties (CPs): Albania, Bosnia and Herzegovina, Georgia, Kosovo\*<sup>2</sup>, Moldova, Montenegro, North Macedonia, Serbia, and Ukraine. The European Union is a Party to the Energy Community Treaty and is represented by the European Commission, while Armenia, Türkiye, and Norway are Observer Countries<sup>3</sup>.

As a body of the Energy Community, the Energy Community Regulatory Board (hereinafter “ECRB”) operates based on Article 58 of the *Treaty establishing the Energy Community*. The ECRB advises the Energy Community Ministerial Council and Permanent High-Level Group on details of statutory, technical, and regulatory rules and should make recommendations for cross-border disputes between regulators. The ECRB is the independent regional voice of energy regulators in the Energy Community. The ECRB’s mission builds on three pillars:

- providing coordinated regulatory positions to energy policy debates,
- harmonizing regulatory rules across borders, and
- sharing regulatory knowledge and experience.

## 1.2. Background

*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”)<sup>4</sup> which entered into force in 2011 aims to support open and fair competition in the European Union’s wholesale energy markets. This regulation has set the ground for increased market transparency and integrity by prohibiting trading based on inside information and deterring market manipulation. By ensuring constant and effective

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<sup>1</sup> <https://www.energy-community.org/>

<sup>2</sup> Throughout this document the symbol \* refers to the following statement: This designation is without prejudice to positions on status, and is in line with UNSCR 1244 and the ICJ Advisory Opinion on the Kosovo\* declaration of independence.

<sup>3</sup> <https://www.energy-community.org/aboutus/whoweare.html>

<sup>4</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32011R1227>

wholesale electricity and gas market surveillance, the implementation of this regulation ultimately protects the interests of electricity and gas consumers, as well as the legitimate interests of market participants.

The Ministerial Council of the Energy Community adapted REMIT for Energy Community (hereinafter EnC) and adopted the *Decision, No D/2018/10/MC-EnC* on 29<sup>th</sup> November 2018 (hereinafter “EnC REMIT”).<sup>5</sup> The mentioned Decision adapted the EU version of REMIT by:

- excluding central data collection by the Agency for the Cooperation of Energy Regulators (hereinafter ACER),
- replacing ACER’s responsibilities on establishing the central register of wholesale market participants in the CPs, and on coordination of investigations by a related competence of the ECRB.

The EnC REMIT requires each CP to ensure that its NRA has the investigatory and enforcement powers necessary for the exercise of functions of the body responsible for monitoring the electricity and gas wholesale market.

In contrast to the obligations of market participants, regulatory bodies, and ACER/ECRB, which are precisely defined by the EU REMIT and EnC REMIT, EU Member States and EnC CPs are left to freely define the rules on penalties applicable to infringements of these regulations and measures necessary to ensure that they are implemented. The only direction given in the regulations related to the penalty regime is the following:

*“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 based on inside information and market manipulation”.*

As stated in the *ECRB’s Report „Implementation of REMIT in the Energy Community Contracting Parties”*<sup>6</sup>, published on 22<sup>nd</sup> January 2024, out of 10 analyzed countries six countries fully transposed the EnC REMIT (Albania, Georgia, Montenegro, North Macedonia, Serbia, and Ukraine), and four partially transposed it (Bosnia and Herzegovina, Kosovo\*, Moldova,<sup>7</sup> and Türkiye).

### **1.3. Purpose, methodology, and scope**

The purpose of this report is to perform an analysis of national legal frameworks of EnC CPs aiming to:

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<sup>5</sup> <https://www.energy-community.org/legal/acquis.html>

<sup>6</sup> <https://www.energy-community.org/documents/ECRB.html>

<sup>7</sup> Transposition of the REMIT Regulation in Moldova is limited to the gas sector.

- ✓ provide a clear picture of the legal frameworks of the CPs related to:
  - the investigatory and enforcement powers of CPs' NRAs,
  - the powers of competent authorities in international cooperation and the conditions that must be met to enable international legal assistance,
  - deadlines in misconduct and criminal proceedings, which will be necessary for timely cooperation via the ECRB, and coordination of NRAs in carrying out their tasks under the EnC REMIT,
- ✓ assess whether sufficient investigatory and enforcement powers are ensured to NRAs in national law,
- ✓ identify legal obstacles to establishing effective penalty regimes and sufficient powers for NRAs for the application of sanctions.

Information and analyses of penalty regimes related to EnC REMIT and enforcement powers of NRAs provided in this report are based on information provided by NRAs of the CPs: Albania (AL), Bosnia and Herzegovina (BA), Georgia (GE), Kosovo\* (XK\*), Moldova (MD), Montenegro (ME), North Macedonia (MK), Serbia (RS) and Ukraine (UA); and two observer countries: Armenia (AM) and Türkiye (TR).

The questionnaire used for the collection of information covered the following topics:

- 1) enforcement powers of NRAs,
- 2) effectiveness of penalty regime,
- 3) misconduct proceedings,
- 4) criminal proceedings.

In addition to the collected information, conclusions provided in this report were drawn taking into account the new developments of EU REMIT and plans concerning the market coupling processes in the CPs and EU Member States.

## 2. FINDINGS

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### 2.1. Enforcement powers of the NRAs

Article 13 (1) of the EnC REMIT prescribes that NRAs shall ensure that the prohibitions of insider trading and market manipulation, as well as the obligation of market participants to publish inside information, are applied. Each CP shall ensure that its NRA has the investigatory and enforcement powers necessary for the exercise of that function.

Article 13 (2) of the EnC REMIT prescribes that the investigatory and enforcement powers of NRAs include the right to:

- (a) have access to any relevant document in any form, and receive a copy of it;
- (b) demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal;
- (c) carry out on-site inspections;
- (d) require existing telephone and existing data traffic records;
- (e) require the cessation of any practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof;
- (f) request a court to freeze or sequester assets;
- (g) request a court or any competent authority to impose a temporary prohibition of professional activity.

The investigatory and enforcement powers of NRAs are transposed into the national legal frameworks of the observed countries in different manners. Namely, as stated in the previously mentioned *ECRB's Report „Implementation of REMIT in the Energy Community Contracting Parties*<sup>8</sup>, five Contracting Parties transposed EnC REMIT into the national legal framework through laws and bylaws (Montenegro, Moldova, North Macedonia, Serbia, and Ukraine), while four Contracting Parties transposed it through secondary legislation (Albania, Bosnia and Herzegovina, Georgia, and Kosovo\*).

An overview of the investigatory and enforcement powers of NRAs ensured in the EnC CPs is provided in Tables 1 - 7.

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<sup>8</sup> <https://www.energy-community.org/documents/ECRB.html>

**Table 1. Overview of the investigatory and enforcement powers of NRAs**

The investigatory and enforcement powers of NRAs	The Energy Community Contracting Parties									Observers	
	AL	BA	GE	XK*	MD	ME	MK	RS	UA	AM	TR
Does the NRA have the authority to impose penalties on market participants for breaches of the REMIT?	Yes	No	Yes	Yes	Yes	No	No	No	Yes	No	No
Does the NRA have the authority to demand reports and data on executed transactions (OTC and PX) and do market participants have an obligation to regularly report on executed transactions to the NRA?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does the NRA have the authority to access any relevant document in any form and receive a copy of it?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Does the NRA have the authority to demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal?	Yes	Yes	Yes	Yes	Yes	No	Yes	No	D <sup>9</sup>	No	Yes
Does the NRA have the authority to carry out on-site inspections?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes
Does the NRA have the authority to require existing telephone and existing data traffic records?	Yes	No	Yes	Yes	No	No	No	No	No	No	D <sup>10</sup>
Does the NRA have the authority to require the cessation of any	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes	No	Yes

<sup>9</sup> According to Investigation Procedure in order under investigation the Regulator conducts a hearing. The Regulator determines the date, time, and place of the hearing, and notifies the subject of the investigation in writing, including specifying the need for the participation of an authorized employee of the subject of the investigation.

<sup>10</sup> The NRA in Türkiye has the authority to require existing data traffic records, but not telephone records.

practice that is contrary to this Regulation or delegated acts or implementing acts adopted on the basis thereof?											
Does the NRA have the authority to request a court to freeze or sequester assets?	Yes	No	No	Yes	No	No	No	No	Yes	No	No
Does the NRA have the authority to request a court or any competent authority to impose a temporary prohibition of professional activity?	Yes	Yes	Yes	Yes	No	Yes	Yes	No	Yes	N/A	No
Does the NRA have the authority to exchange information with other authorities when investigating a violation under REMIT?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

The overview of the investigatory and enforcement powers of NRAs in the CPs and Observer countries shows that all NRAs, except in Albania and Kosovo\*, lack certain powers. The most common NRAs lack the authority to:

- impose penalties (in such cases),
- require existing telephone and existing data traffic records, and
- request a court to freeze or sequester assets.

Related to the authority to impose penalties, in legal systems where NRA is not entitled to do so, the competent courts have the authority to determine and impose penalties.

When it comes to the authority to require existing telephone and existing data traffic records, the reason for lacking this authority is in the principle of inviolability of confidentiality of letters, telephone conversations, and other means of communication which may be deviated from only based on a court decision.

The main reason NRAs do not have the right to request a court to freeze or sequester assets is the absence of a provision that allows it in the legal frameworks of Georgia, Moldova, Montenegro, North Macedonia, Serbia, Armenia, and Türkiye. In such cases, other institutions are granted that right (e.g. Public Prosecutor, Criminal Investigation Body, Competent Court, etc.).

## 2.2. Effectiveness of Penalty Regimes

Penalty regimes related to EnC REMIT are designed differently in the CPs. For different types of the REMIT breaches some countries envisaged only administrative fines (Albania, Georgia, and Kosovo\*), some countries envisaged administrative and criminal sanctions (Montenegro, Serbia, Ukraine), and in North Macedonia and Moldova, only criminal sanctions are envisaged, as elaborated in more details in the ECRB's *Report on "REMIT Penalty Regime in Energy Community Contracting Parties and European Union Member State" (2022)*.

Also, the level of administrative fines is different from country to country. The maximum amount of the fine set by legal acts governing misconduct, criminal offenses, or other legal acts that would be applied in case of REMIT light breaches is set in the majority of EnC CPs (Albania, Georgia, Kosovo\*, Moldova, Montenegro, Serbia, and Ukraine). Natural or/and legal persons can be penalized according to laws governing misconduct and criminal offenses based on a percentage of financial damages that they caused on the market only in Albania, Georgia<sup>11</sup>, Montenegro, and North Macedonia.

Conducting an investigation and implementation of penalty regimes, especially in cross-border cases, may be challenging due to existing differences in the legal frameworks of the EnC CPs, and insufficient compatibility of the legal frameworks governing misconduct and criminal proceedings with the provisions of REMIT. In order to assess the magnitude of these challenges, information concerning legal frameworks related to misconduct and criminal proceedings, and their correlation with EnC REMIT provisions are gathered and examined.

All EnC CPs transposed definitions from the EnC REMIT (including the definition of "wholesale energy product" which is essential for investigation and enforcement processes). Article 2 (4) of EnC REMIT defines wholesale energy products as 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 Contracting Parties**; (b) <...> (c) contracts relating to the transportation of electricity or natural gas in the Contracting Parties.

In the *ECRB Guidance on REMIT Regulation*<sup>12</sup>, published on 26<sup>th</sup> April 2022, it is clarified that the definition of wholesale markets includes all markets and timeframes where wholesale energy products are traded, i.e. balancing, re-dispatch, and countertrading, short-term markets, forward markets, transportation markets, capacity markets, local flexibility markets for electricity, etc. It is also referred to the *ACER's Guidance on the application of REMIT*<sup>13</sup> which has provided extensive clarification on

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<sup>11</sup> Applies to legal persons only.

<sup>12</sup> [ECRB Guidance on REMIT Regulation](#)

<sup>13</sup> <https://www.acer.europa.eu/remit/about-remit/remit-guidance>

the definition of the wholesale market products and contracts that are captured under REMIT, which is valid also in the context of EnC REMIT.

In the *ACER's Guidance on the application of REMIT* it is stated that “as the definition of wholesale energy product applies to contracts and derivatives **‘irrespective of how and where they are traded’**, the Agency considers that this definition covers contracts and derivatives that are intermediated by persons personally arranging transactions (the concept of PPATs is further detailed in Chapter 8 of the Guidance) but also that are traded bilaterally and/or over the counter (OTC).

The application of the mentioned definition in misconduct and criminal proceedings related to abuses on the wholesale energy market is relatively simple when it comes to transactions carried out through Power Exchanges. However, it becomes complicated when it comes to bilateral contracts, given that the legal frameworks of the CPs that regulate misconduct and criminal procedures define important aspects that determine whether prosecution is possible or not in specific cases.

Concretely, **the territorial principle** is applied in the implementation of the laws governing misdemeanors and criminal acts in the majority of observed countries (Georgia, Kosovo\*, Moldova, Montenegro<sup>14</sup>, North Macedonia, Serbia, Ukraine, and Türkiye). **The place of conclusion of the bilateral contract**, which is relevant for concluding whether a certain contract can be subject to a misconduct or criminal review if it constitutes a market abuse, is defined in the majority of CPs as **the place where the bidder had his headquarters**, i.e. residence at the time when the offer for the conclusion of the contract was made (Moldova, Montenegro, North Macedonia, Serbia, Ukraine).

Suppose misdemeanor and criminal proceedings may be carried out respecting the territorial principle, which is, in cases of REMIT light breaches, interpreted in the light of the definition of the place of conclusion of the bilateral contract. In that case, the market manipulation prosecuted in certain EnC CPs can not be related to „*contracts for the supply of electricity or natural gas where delivery is in the Contracting Parties*“ as required by REMIT light.

Having in mind experience in REMIT implementation in the EU, and the latest REMIT amendments (REMIT II) related to the requirement that the market participants resident or established in third countries must designate a representative in a Member State in which the market participants are active in the wholesale energy market.

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<sup>14</sup> In Montenegro, The Criminal Code prescribes territorial principles in governing criminal offenses. However, the Code also prescribes certain exemptions from the territorial principle. Namely, the criminal legislation of Montenegro applies also to:

- a person who is not a citizen of Montenegro who commits a criminal offense against Montenegro or a Montenegrin citizen outside the territory of Montenegro;
- a person who is not a citizen of Montenegro who commits a criminal offense abroad against a foreign state or against a foreigner, for which, according to the law of the country in which the offense was committed, a prison sentence of four years or a heavier sentence can be imposed, if that person is found on the territory of Montenegro, and it is not extradited to a foreign country.

For EnC REMIT enforcement, it is important to assess whether electricity and/or gas traders are required to have a trading license, be registered as a legal entity, have physical premises, and/or have a bank account in the CPs where they are active on the market.

In order to be able to participate in the wholesale market an electricity trader has to:

- have a trading license in Albania, Bosnia and Herzegovina, Kosovo\*, Moldova, North Macedonia, Serbia, Ukraine, Armenia, and Türkiye;
- be registered as a legal entity in Albania, Bosnia and Herzegovina, Georgia, Kosovo\*, Moldova, North Macedonia, Ukraine, Armenia, and Türkiye;
- have premises in Kosovo\*, Moldova, North Macedonia, Ukraine, Armenia and Türkiye;
- have a bank account in Albania, Bosnia and Herzegovina, Georgia, Kosovo\*, Moldova, North Macedonia, Ukraine, Armenia, and Türkiye.

In order to be able to participate in the wholesale market a gas trader has to:

- have a trading license in Albania, Moldova, Serbia, North Macedonia and Türkiye;
- be registered as a legal entity in Albania, Moldova, North Macedonia, Ukraine, Armenia and Türkiye;
- have premises in Moldova, North Macedonia and Türkiye;
- have a bank account in Albania, Moldova, North Macedonia, Ukraine and Türkiye.

For countries that do not require that a trader that is active in their electricity and/or gas wholesale market is registered as a legal entity, and has premises and a bank account, enforcement of decisions related to EnC REMIT breaches is more challenging than in other countries that require these conditions for participation in the market. In such cases, NRAs have to rely on international cooperation between relevant institutions – NRAs and courts, which requires more time to carry out the necessary procedures.

The relevant aspects of misconduct and criminal proceedings in the CPs are provided in the following chapters.

### **2.2.1. Misconducts proceedings**

Considering the fact that with the integration of wholesale electricity markets, REMIT breaches become more cross-border in nature, existing legal frameworks regulating misconduct proceedings in the Enc CPs are analysed to assess enforcement of REMIT. Collected information is provided in Table 2 that follows.

**Table 2. Overview of misconduct proceedings in the Enc CPs**

Relevant aspects of misconduct proceedings	The Energy Community Contracting Parties									Observers	
	AL	BA	GE	XK <sup>*</sup>	MD	ME	MK	RS	UA	AM	TR
Does the law governing misconduct also apply to foreign persons who commit a misconduct?	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes
Is there a legal possibility that NRA or the court prosecute market participants registered in their country for breaches they committed in other countries?	N/A	Yes	No	No	No	No	Yes	Yes	No	N/A	No
Is it a condition for misconduct prosecution of a foreign person that the same offense is categorized as a misconduct in the country from which that person originates? Is there any other condition?	No	No	No	N/A	No	No	No	No	No	N/A	No
Is there a legal possibility that the court hear, collect, and submit evidence to the court of another country related to breaches that market participants registered in your country committed in other countries?	N/A	No	N/A	Yes	No	Yes	Yes	No	No	N/A	Yes
Is there a legal possibility that the court extradite the persons who have committed breaches in another country?	N/A	No	N/A	Yes	No	No	Yes	No	No	N/A	N/A
Is there a legal possibility that the court in your country, in order to enforce a foreign court decision, impose a sanction on a market participant from your country for an act committed on the market of another country?	N/A	Yes	N/A	Yes	No	No	Yes	No	No	N/A	N/A

Is the existence of international agreements necessary for your country to provide international legal assistance to another Contracting Party of the Energy Community?	N/A	D <sup>15</sup>	N/A	Yes	No	Yes	D <sup>16</sup>	Yes	D <sup>17</sup>	N/A	N/A
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The facts that in each of the countries that submitted the requested information, the law governing misconduct also applies to foreign persons who commit a misconduct, and there is no requirement for the same offense to be categorized as a misconduct in the country from which that person originates, are encouraging. However, information on the possibilities of courts to hear, collect, and submit evidence to court of another country, to extradite the persons who have committed breaches in another country, or impose sanctions on a market participant for an act committed abroad, indicate that judicial cooperation between countries in misconduct proceedings has limited scope.

As we can see in Table 2, in certain countries it is a prerequisite to have signed international agreements to provide international legal assistance about misconduct. The following have the signed agreements on providing mutual legal assistance regarding offences:

- Montenegro with North Macedonia, and Serbia.
- North Macedonia with Bosnia and Herzegovina, Croatia, Montenegro, Slovenia, and Serbia.
- Serbia with Albania, Montenegro, and North Macedonia.

Investigation of REMIT breaches is a demanding process that requires a lot of time and effort from NRAs. In order not to miss the chance to sentence the offender, NRAs should have in mind deadlines for starting and conducting misconduct proceedings and for enforcement when investigating potential breaches. Differences in deadlines across CPs require special attention when investigating cross-border cases.

Statute of limitations for starting and conducting misconduct proceedings:

- No information on Albania, Georgia, Armenia and Türkiye.
- Bosnia and Herzegovina: According to the Law on misconduct, the limitation period for misconduct with the imposed fine of up to 3000 BAM (circa 1,535 EUR) runs from the date of the commission and lasts **1 year**. For misconduct

<sup>15</sup> International agreements are not necessary, but Bosnia and Herzegovina will act on the request of another country if that country gives guarantees of providing legal assistance to Bosnia and Herzegovina, if needed (guaranties of reciprocity)

<sup>16</sup> It depends on the type of issue, whether a decision by the ECRB has been adopted and whether it has been transposed in national legislation or not.

<sup>17</sup> Ukrainian legislation does not provide the provision of international legal assistance in the context of an administrative proceeding.

with the imposed fine over 3000 BAM runs from the date of the commission and lasts **2 years**. Where the limitation period is interrupted, it shall start to run a new from the day of the interruption, but, in any case, a misconduct procedure cannot be initiated nor conducted upon the expiry of **double of the above-mentioned period** from the day when the misconduct was committed. However, sectoral laws, such as the Law on Transmission of Electric Power, Regulator and System Operator in Bosnia and Herzegovina, do not prescribe misconduct in the area of competition, energy trade, and prohibition of abusive practices affecting the wholesale electricity market functioning.

- Kosovo\*: Proceedings for a minor offense shall not be commenced if **1 year** has passed from the date when such a minor offense was committed. According to the Law on Minor Offenses, certain minor offenses may be determined longer periods of statutory limitations, but not longer than **5 years**.
- Moldova: According to Article 30 (5) of the Contravention Code, the limitation period runs from the date of the commission of the contravention until the date of finality of the decision regarding the contravention case. However, there are no misconduct charges for the violation of REMIT rules.
- Montenegro: According to Article 21 of the Law on the Surveillance of Wholesale Electricity and Gas Market the procedure for determining the violation of the provisions of this Law may not be initiated or conducted if at least **3 years** have elapsed from the day when the misdemeanor was committed. The statute of limitations for prosecution arises when **6 years** have elapsed from the day when the misconduct was committed.
- North Macedonia: According to Article 41 (1) of the Law on Misconduct the misdemeanor procedure cannot be initiated nor conducted upon the expiry of **2 years** from the day when the misdemeanor was committed. However, for misconduct in the area of competition, energy, trade with prohibited goods/goods with restricted use, people's health, protection of natural wealth, environment, cultural heritage protection, protection from natural and other disasters, electronic communications or misdemeanors conducted upon usurpation, the procedure cannot be initiated nor conducted upon the expiry of **5 years** from the day when the misdemeanor was committed.
- Serbia: According to Article 37 of the Law on economic offenses (misconduct), the mustiness of prosecution for economic offense occurs after **3 years** from the day when the economic offense is performed. Exceptionally, for economic offenses in foreign trade, foreign exchange, and customs operations, the mustiness of prosecution occurs after 5 (five) years from the day the economic offense is performed.
- Ukraine: The deadline for conducting an administrative proceeding is not defined by the relevant legislation, including the Code on Administrative Offenses of Ukraine.

Statute of limitations for enforcing misconduct penalties:

- No information on Albania, Georgia, Armenia and Türkiye;
- Bosnia and Herzegovina: According to Article 23 of the Law on Misconduct, the protective measure cannot be carried out if **1 year** has passed since the date of validity, i.e. the finality and enforceability of the decision on the misconduct. However, sectoral laws, such as the Law on Transmission of Electricity, Regulator and System Operator in Bosnia and Herzegovina, do not prescribe misconduct in the area of competition, energy trade, and prohibition of abusive practices affecting the wholesale electricity market functioning;
- Kosovo\*: A sanction rendered for a minor offense cannot be executed if **1 year** has passed from the date when the decision on the minor offense has become final. According to the Law on Minor Offenses, certain minor offenses may be determined longer periods of statutory limitations for prosecution;
- Moldova: According to Article 30 (5) of the Contravention Code, the statute of limitations for the enforcement of the contravention sanction is 1 year, calculated from the date on which the decision by which it was applied became final.
- Montenegro: According to article 60 of the Law on Misconduct the imposed punishment or protective measure cannot be carried out if **2 years** have passed since the date of validity, i.e. the finality and enforceability of the decision on the misdemeanor. The statute of limitations for the execution of a penalty or protective measure begins from the date of validity, i.e. the finality and enforceability of the decision on the offense by which the penalty or protective measure was imposed. The statute of limitations for the enforcement of a penalty or protective measure does not run during the time during which enforcement cannot be undertaken by law. The statute of limitations is interrupted by any action taken to enforce the penalty and protective measures. With each interruption, the statute of limitations begins to run again. The statute of limitations for the execution of a penalty or protective measure, in any case, occurs when twice as much time has passed as is required by law for the statute of limitations for the execution of a penalty or protective measure.
- North Macedonia: According to Article 42 of the Law on Misconduct, the imposed misconduct sanction cannot be enforced **2 years** from when the misconduct decision came into force.
- in Serbia: According to Article 38 of the Law on economic offenses (misconduct), the mustiness of penalty enforcement occurs after **3 years** from the day when a penalty decision becomes final.
- in Ukraine: According to Article 38 (1) of the Code on Administrative Offenses of Ukraine, administrative penalties may be imposed no later than **2 months** from the date of the offense, and in the case of an ongoing offense, no later than **2 months** from the date of its discovery.

## 2.2.2. Criminal proceedings

Considering the fact that with the integration of wholesale electricity markets, the impact of REMIT breaches extends increasingly across regional market, resulting in with cross-border cases, existing legal frameworks regulating criminal proceedings in the CPs are analyzed to assess whether they ensure enforcement of REMIT. Collected information is provided in Table 3 which follows.

**Table 3. Overview of criminal proceedings in the Enc CPs**

Relevant aspects of criminal proceedings	The Energy Community Contracting Parties									Observers	
	AL	BA	GE	XK*	MD	ME	MK	RS	UA	AM	TR
Does the law governing criminal offenses also apply to foreign persons who commit a criminal offense?	N/A	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	Yes
Is it a condition for the criminal prosecution of a foreign person that the same offense is categorized as a criminal offense in the country from which that person originates? Is there any other condition?	N/A	No	N/A	No	No	No	No	No	No	N/A	N/A
Is there a legal possibility that the court hears, collects, and submits evidence to the court of another, country related to breaches that market participants registered in your country committed in other countries?	N/A	Yes	N/A	Yes	Yes	Yes	Yes	Yes	No	N/A	No
Is there a legal possibility that the court extradite the persons who have committed breaches in another country?	N/A	No	N/A	Yes	Yes	Yes	Yes	Yes	Yes <sup>18</sup>	N/A	Yes
Is there a legal possibility that the court in your country, in order to enforce a foreign	N/A	Yes	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A	N/A

<sup>18</sup> According to Article 10 of the Criminal Code of Ukraine Ukrainian citizens who have committed crimes outside Ukraine cannot be extradited to a foreign state for prosecution and trial. Foreigners and stateless persons who have committed crimes outside Ukraine and are present on the territory of Ukraine may be extradited to a foreign state for prosecution and trial.

court decision, impose a sanction on a market participant from your country for an act committed on the market of another EnC CPs?											
Is your country a signatory to the European Convention on Mutual Legal Assistance in Criminal Matters and has it become a part of the legal system of your country?	N/A	Yes	N/A	N/A	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Is the existence of international agreements necessary for your country to provide international legal assistance to another EU or EnC CPs country and has it become a part of the legal system of your country?	N/A	D <sup>19</sup>	N/A	N/A	Yes	No	No	Yes	N/A	N/A	N/A

In comparison with misconduct proceedings, the legal preconditions in criminal matters in courts, such as hearing, collecting, and submitting evidence to the court of another country, extraditing persons who have committed breaches in another country, or imposing sanctions on a market participant for an act committed in another country, are significantly more favorable.

As we can see in Table 3, in certain countries it is a prerequisite to have signed international agreements to provide international legal assistance in criminal matters. Signed agreements on providing mutual legal assistance in criminal matters are the following:

- No information on Albania, Georgia, Kosovo\*, Ukraine, Armenia and Türkiye.
- Bosnia and Herzegovina<sup>20</sup>: Serbia, Croatia, Montenegro, North Macedonia, Slovenia, Albania, Hungary, Ukraine, Austria, Belgium, Bulgaria, Czech Republic, Danmark, France, Greece, Holand (extradition), Italy (civil cases), Cyprus, Hungary, Germany, Poland, Romania, Russian Federation, Slovakia, Spain, Switzerland (extradition), Türkiye, Great Britain (extradition), Ukraine.

<sup>19</sup> International agreements are not necessary, but Bosnia and Herzegovina shall act on the request of another country if that country gives guarantees of providing legal assistance to Bosnia and Herzegovina, if needed (guarantees of reciprocity).

<sup>20</sup> In Bosnia and Herzegovina it is not a prerequisite to have signed international agreements to provide international legal assistance in criminal matters. The agreements are signed with above-mentioned countries, but Bosnia and Herzegovina shall act on the request for legal assistance of any other country if that country gives guarantees of providing legal assistance to Bosnia and Herzegovina, if needed (guaranties of reciprocity) - Article 12 of the Law on international legal assistance in criminal matters.

- Moldova with Azerbaijan, Czech Republic, Letonia, Lithuania, Romania, Russian Federation, Slovak Republic, Türkiye, Ukraine, and Hungary.
- Montenegro with Austria, Belgium, Bosnia and Herzegovina, Czech Republic, Denmark, France, Greece, Nederland, Cypress, Hungary, Germany, Poland, Russian Federation, Slovenia, Switzerland, Türkiye, Serbia, Slovakia, Romania, North Macedonia, Italy, Croatia, Spain<sup>21</sup>.
- North Macedonia with Albania (civil and criminal cases, extradition, mutual execution of court decisions in criminal cases), Bulgaria (civil cases), Bosnia and Hercegovina (civil and criminal cases, extradition, mutual execution of court decisions in criminal cases), Montenegro (civil and criminal cases, mutual execution of court decisions in criminal cases, extradition), Croatia (mutual execution of court decisions in criminal cases, civil and criminal cases, extradition), Kosovo (criminal cases, extradition, transfer of convicted persons, civil cases), Romania (civil cases), Ukraine (civil cases), Slovenia (civil and criminal cases, mutual execution of court decisions in criminal cases, extradition), Türkiye (civil and criminal cases), Serbia (civil and criminal cases, mutual execution of court decisions in criminal cases, extradition), Kazakhstan (extradition, criminal cases, transfer of convicted persons).
- Serbia with Albania, Algeria, Austria, Belgium, Bosna and Hercegovina, Montenegro, Bulgaria, Czech Republic, Danmark, France, Greece, Holand, Croatia, Iraq, Italy, Cyprus, Hungary, N. Macedonia, Mongolia, Germany, Poland, Romania, Russian Federation, USA, Slovakia, Spain, Switzerland, Türkiye, Great Britain.

Differences in the deadlines envisaged by legal frameworks in CPs require particular attention when investigating EnC REMIT breaches. The deadlines related to the criminal proceedings in place in CPs are provided below.

Statute of limitations for starting and conducting criminal proceedings:

- No information on Albania, Georgia, Armenia and Türkiye;
- Bosnia and Herzegovina: According to the Criminal Code (Article 14), the deadline for criminal prosecution depends on the severity of the punishment. This deadline can be **20 years** from the commission of a criminal offense for which a prison sentence of over 10 years can be imposed, **15 years** for criminal offenses for which a prison sentence of over 5 years can be imposed, **10 years** for criminal offenses for which a prison sentence of over 3 years can be imposed, **5 years** for criminal offenses for which a prison sentence of over 1 year can be imposed and **3 years** for criminal offenses for which a prison sentence of up to 1 year or fine can be imposed;

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<sup>21</sup> Most of the above-mentioned agreements are signed by the former Socialist Federative Republic of Yugoslavia. After gaining independence Montenegro ratified these agreements.

- Kosovo\*: According to the Criminal Code the criminal prosecution may not be initiated after the following periods have elapsed: **30 years** from the commission of a criminal offense punishable by lifelong imprisonment; **20 years** from the commission of a criminal offense punishable by imprisonment of more than 10 years; **15 years** from the commission of a criminal offense punishable by imprisonment of more than 5 years; **10 years** from the commission of a criminal offense punishable by imprisonment of more than 3 years; **6 years** from the commission of a criminal offense punishable by imprisonment of more than 1 year; and **4 years** from the commission of a criminal offense punishable by imprisonment up to 1 year or punishment of a fine;
- Moldova: There is no term for the exercise of criminal investigations. The prosecution will take place within the statute of limitations of the crime being investigated.
- Montenegro: According to Article 124 of the Criminal Code deadline for criminal prosecution depends on the severity of the punishment. This deadline can be **25 years** from the commission of a criminal offense for which a long-term prison sentence may be imposed by law, up to **2 years** from the commission of a criminal offense for which a prison sentence of up to one year or a fine may be imposed by law. Article 34 of the Law on Liability of Legal Entities for Criminal Offences prescribes that the statute of limitations for criminal prosecution of a legal entity is calculated according to the penalty prescribed for the responsible person who committed the criminal act. Criminal prosecution cannot be initiated when the statute of limitations prescribed in Article 124 of the Criminal Code of Montenegro has expired.
- North Macedonia: According to Article 107 of the Criminal Code, if not otherwise determined in this Code, criminal prosecution cannot be initiated when **30 years** have passed since the commission of a crime for which, according to the law, life imprisonment sentence can be imposed; **20 years** have passed since the commission of a crime for which, according to the law, imprisonment for more than 10 years can be imposed; **10 years** have passed since the commission of a crime for which, according to the law, imprisonment of more than 5 years can be imposed; **5 years** have passed since the commission of a crime for which, according to the law, imprisonment of more than 3 years can be imposed; **3 years** have passed since the commission of a crime for which, according to the law, imprisonment exceeding 1 year can be imposed; **2 years** have passed since the commission of a crime for which, according to the law, imprisonment for up to 1 year or a fine can be imposed. If multiple penalties are set by the Criminal Code for a crime, the statute of limitations is determined according to the heaviest set penalty.
- Serbia: According to Article 103 of the Criminal Code, the mustiness of prosecution for criminal offenses occurs after **2-20 years** from the day when

the criminal offense is performed, depending on the kind and amount of prescribed fine.

- Ukraine: According to paragraph 2 of part two of Article 219 of the Criminal Procedure Code of Ukraine, the pre-trial investigation period is **18 months** in criminal proceedings related to a serious or particularly serious crime.

Statute of limitations for enforcing penalties:

- No information on Albania, Georgia, Armenia and Türkiye;
- in Bosnia and Herzegovina: According to Article 16 of the Criminal Code of Bosnia and Herzegovina, the imposed penalty cannot be enforced when it has expired from **3 to 35 years** from the verdict, depending on the duration of the conviction to a prison sentence (This deadline can be **20 years** when a prison sentence of over 10 years is imposed, 15 years when a prison sentence of over 5 years is imposed, 10 years when a prison sentence of over 3 years is imposed, 5 years when a prison sentence of over 1 year is imposed and 3 years when a prison sentence of up to 1 year or fine is imposed);
- in Kosovo\*: According to the Criminal Code the imposed punishment cannot be executed after the following periods have elapsed: **30 years** from a sentence of life long imprisonment; **20 years** from a sentence of imprisonment of more than 10 years; **15 years** from a sentence of imprisonment of more than 5 years; **10 years** from a sentence of imprisonment of more than 3 years; **6 years** from a sentence of imprisonment of more than 1 year; and **4 years** from a sentence of imprisonment up to 1 year or punishment of a fine;
- in Moldova: According to Article 244 of the Criminal Code (Manipulation on the natural gas market), a fine in the amount of 2350 to 3350 conventional units or with imprisonment of up to 3 years, in both cases with (or without) the deprivation of the right to hold certain positions or to exercise a certain activity for a period of from 2 to 5 years, and the legal person is punished with a fine of 5000 to 7000 conventional units with the deprivation of the right to exercise a certain activity or with the liquidation of the legal person. Article 244 of the Criminal Code (Abusive use of privileged information on the natural gas market) prescribes a fine in the amount of 1350 to 3350 conventional units or imprisonment of up to 2 years, in both cases with (or without) the deprivation of the right to hold certain positions or to exercise a certain activity for a period of 2 to 5 years, and the legal person is punished with a fine in the amount of 4000 to 7000 conventional units with the deprivation of the right to exercise a certain activity or with the liquidation of the legal person;
- Montenegro: According to Article 126 of the Criminal Code, the imposed penalty cannot be enforced when it has expired from **2 to 20 years** from the verdict, depending on the duration of the conviction to a prison sentence. The statute of limitations for the execution of a fine as a secondary penalty occurs when **2 years** have passed since the date of the judgment by which that penalty was imposed. According to Article 34 paragraph 2 of the Law on Liability of

Legal Entities for Criminal Offence the imposed sentence cannot be enforced when it has expired: **3 years** from the conviction to a fine; **8 years** from the conviction to the penalty of termination of the legal entity.

- North Macedonia: According to Article 107 of the Criminal Code, if not otherwise determined in this Code, criminal prosecution cannot be initiated when **30 years** have passed since the commission of a crime for which, according to the law, life imprisonment sentence can be imposed; 20 years have passed since the commission of a crime for which, according to the law, imprisonment for more than 10 years can be imposed; **10 years** have passed since the commission of a crime for which, according to the law, imprisonment of more than 5 years can be imposed; **5 years** have passed since the commission of a crime for which, according to the law, imprisonment of more than 3 years can be imposed; **3 years** have passed since the commission of a crime for which, according to the law, imprisonment exceeding 1 year can be imposed; **2 years** have passed since the commission of a crime for which, according to the law, imprisonment for up to 1 year or a fine can be imposed. If multiple penalties are set by the Criminal Code for a crime, the statute of limitations is determined according to the heaviest set penalty.
- Serbia: According to Article 105 of the Criminal Code, the mustiness of penalty enforcement occurs after **2-20 years** from the day when a penalty decision becomes final, depending on the kind and amount of imposed penalty.
- Ukraine: According to point 5 of part one of Article 49 of the Criminal Code, a person is exempt from criminal liability if **15 years** have passed from the date of their commission of a criminal offense to the date when the verdict becomes legally binding, in the case of committing a particularly serious crime.

## 3. BROAD CONTEXT

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### 3.1. Market integration

The creation of a fully competitive and integrated electricity market is one of the main goals of electricity sector reforms. It is perceived as the best mean to deliver competitive prices for customers and deliver signals for investments. These markets send important signals for future investments in energy infrastructure and bring competitive pressure to national markets that have historically been characterized by a dominant position of incumbents. Prices established at the wholesale level serve as the benchmark for retail prices, so competitive prices on the wholesale level allow also customers to benefit from competitive prices on the retail level. For this reason, citizens, businesses, and national authorities must have confidence in price signals and therefore in the integrity of markets. Recognizing this, CPs constantly put efforts into energy sector reforms and harmonization of national legal frameworks with the EnC acquis.

The integration of CPs into the EU's Single Day-Ahead Coupling (SDAC) and Single Intraday Coupling (SIDC) markets represents a major step towards creating a competitive and unified electricity market across Europe. The adoption of the “*Electricity Integration Package*” by the Energy Community Ministerial Council at the end of 2022, sets the ground for integration of the national electricity markets of the CPs into the EU electricity market.<sup>22</sup> Transposition of this package into national legal frameworks of CPs is currently ongoing. Finalization of this process will establish the legal basis for day-ahead and intraday market coupling.

In parallel with the transposition process, many CPs started with the fulfillment of certain obligations prescribed by the “*Electricity Integration Package*” (designation of NEMO<sup>23</sup>, discussions on how to make CCRs operational, consideration of possible Local Implementation Projects, preparatory activities for inclusion in SDAC etc.). One of the obligations prescribed by Article 7 Paragraph 3 of *Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management*, adapted for the EnC, (hereinafter EnC CACM)<sup>24</sup> is the obligation of NEMOs from Contracting Parties and EU Member States to submit to all NRAs, ECRB, and ACER a plan for integration of NEMOs from Contracting Parties in the market coupling operator functions by 15<sup>th</sup> December 2023.

Following the conclusions from Athens Forum 2023, the Joint Expert Team of the Energy Community (hereinafter JET EnC) is established under the umbrella of the

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<sup>22</sup> [Energy Community acquis - Energy Community Homepage \(energy-community.org\)](https://energy-community.org/)

<sup>23</sup> [Implementing the Electricity Integration Package - Energy Community Homepage \(energy-community.org\)](https://energy-community.org/)

CACM Pentilateral Coordination Group (hereinafter CACM PCG) to create a common platform for regular discussions related to the Contracting Parties' integration into SDAC and SIDC. One of the main tasks of JET EnC is to support the preparation of a Market Coupling Operator Integration Plan (hereinafter MCO IP) in line with Article 7 paragraph 3 of EnC CACM. Even though there were some open legal questions related to MCO IP submission, EU NEMOs managed to prepare the Draft MCO Integration Plan by the submission deadline prescribed by EnC CACM. However, several days before the submission deadline, the European Commission, ACER, and Energy Community Secretariat sent a joint letter on the MCO IP to the NEMO Committee Chairman to recommend the postponement of the submission of MCO IP for six months (15<sup>th</sup> June 2024) due to the delays in transposition of the “*Electricity Integration Package*” by all Contracting Parties. Due to further delays this was postponed to October 2024.

MCO IP contains, inter alia, an implementation timeline for the EnC NEMOs' integration into SDAC and SIDC. According to the current draft of MCO IP, the first “wave” of inclusion of EnC CPs in SDAC is expected no earlier than by the first quarter of 2026.

Bearing in mind that integration of the CPs' markets into EU's internal energy market is just a step away from us, we have to ensure that this process is followed with the proper and effective market surveillance.

In a market that is continuously evolving, integrity can be put into question in case market participants engage in abusive practices (insider trading and market manipulation). Unless effectively addressed, such practices undermine the public's trust, deter investment, increase the volatility of prices, and lead to unfair prices. In the coupled markets, wholesale prices reflect the supply and demand in all coupled markets. Effective oversight will be crucial to maintaining trust in these coupled markets, as any form of market abuse in one region can have cascading effects across the entire coupled markets.

### **3.2. The Electricity Market Reform and Amendments of EU REMIT**

Recognizing the importance of a competitive market and the need for trust in the market, the EU acquis includes the following regulations that prohibit market abuse and require constant market surveillance:

1. REMIT<sup>25</sup>;
2. *Commission Implementing Regulation (EU) No 1348/2014 on data reporting implementing Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of*

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<sup>25</sup> [Regulation - 1227/2011 - EN - REMIT - EUR-Lex \(europa.eu\)](#)

*the European Parliament and the Council on wholesale energy market integrity and transparency (hereinafter REMIT IR)<sup>26</sup>.*

Open and fair competition in the internal markets for electricity and gas and ensuring a level playing field for market participants requires integrity and transparency in wholesale energy markets. REMIT, REMIT IR, and ACER's Guidance on the application of REMIT<sup>27</sup>, establish a comprehensive market integrity and transparency framework.

After more than a decade of REMIT implementation, EU recognized the need to enhance rules and processes that detect and penalise the abusive behaviour

Furthermore, *Commission Regulation (EU) 2015/1222 establishing a guideline on capacity allocation and congestion management* (hereinafter CACM) foresees the possibility of third-country participation in the Union single day-ahead and intraday coupling in the electricity sector. Since the market coupling operator uses a specific algorithm to match bids and offers optimally, this may result in orders to trade being placed in a third country participating in the Union SDAC and SIDC but resulting in a contract for the supply of electricity with delivery in the Union. The placing of such orders to trade in third countries participating in the Union single day-ahead and intraday coupling that may result in delivery in the Union should be covered by the definition of wholesale energy product under REMIT.<sup>28</sup>

Enforcement action against cross-border market abuses can present jurisdictional challenges relating to the identification of the NRA that would be best placed to pursue the investigation in question. Market abuse cases involving multiple cross-border elements and market participants established outside the EU are also particularly challenging from an enforcement perspective. The current supervisory setup does not seem to be appropriate for the desired level of market integration. The absence of a mechanism to ensure the best possible supervisory decisions for cross-border cases, where joint action by NRAs and ACER currently requires complicated arrangements, and where there is a patchwork of supervisory regimes must be addressed.<sup>29</sup>

To enhance the public's trust in functioning energy markets and to protect the EU effectively against market abuse, REMIT is currently evolving to ensure further transparency and increase monitoring capacities, thereby contributing to the stabilization of energy prices and consumer protection, as well as to ensure more effective investigation and enforcement of potential cross-border market abuse cases addressing the shortcomings identified in the current framework. The European Commission published its legislative proposals to reform the EU electricity market on 14<sup>th</sup> March 2023, which includes amendments to REMIT that aim to improve the

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<sup>26</sup> [Implementing regulation - 1348/2014 - EN - EUR-Lex \(europa.eu\)](#)

<sup>27</sup> [ACER Guidance on REMIT application | www.acer.europa.eu](#)

Union's protection against market manipulation in the wholesale energy market and to enhance the toolbox available to monitor and enforce market integrity and transparency. REMIT II was adopted by the European Parliament and the Council a year later, published on 11 April 2024.<sup>30</sup> These amendments seek to bring substantive changes to the REMIT framework and expand the role of the ACER in its enforcement. They also emphasize the importance of the harmonization of sanctions and measures for breaches of REMIT at the national level.

The substantial REMIT amendments are the following:

1. Market participants resident or established in third countries must designate a representative in a Member State where they are active in the wholesale energy market, and shall register with the national regulatory authority of that Member State.
2. ACER will have the following investigatory powers in cases with a cross-border dimension: conduct on-site inspections, issue requests for information, and take statements. ACER may appoint an investigating officer, where appropriate, to ensure the effectiveness and efficiency of the investigations. ACER will have the competency to impose periodic penalty payments to ensure compliance with on-site inspection decisions and decisions regarding requests for information.
3. A list of administrative fines and administrative measures, as well as a list of criteria for determining the level of those administrative fines, will be provided to NRAs to ensure the consistent application of administrative fines across Member States for breaches of REMIT.
4. Member States shall, in accordance with national law, and the *ne bis in idem* principle, ensure that NRAs have the power to impose at least the following administrative sanctions and administrative measures relating to breaches of the provisions of REMIT:
  - a) requiring the person to bring the breach to an end;
  - b) the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined;
  - c) issue public warnings or notices;
  - d) imposing periodic penalty payments;
  - e) imposing administrative fines<sup>31</sup>.

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<sup>31</sup> Notwithstanding point (e), the amount of the fine shall not exceed 20% of the annual turnover of the legal person concerned in the preceding business year. In the case of natural persons, the amount of the fine shall not exceed 20% of the yearly income in the preceding calendar year. Where the person has directly or indirectly benefited financially from the breach, the amount of the fine shall be at least equal to that benefit.

5. Fines should be harmonized across countries, and concerning legal persons, maximum administrative fines should be at least:
  - a) 15% of the total turnover in the preceding business year, for breaches of Articles 3 and 5;
  - b) 2% of the total turnover in the preceding business year, for breaches of Articles 4 and 15;
  - c) 1% of the total turnover in the preceding business year, for breaches of Articles 8 and 9.
- For natural persons, maximum administrative fines should be at least:
  - a) EUR 5 million, for breaches of Articles 3 and 5;
  - b) EUR 1 million, for breaches of Articles 4 and 15;
  - c) EUR 0.5 million, for breaches of Articles 8 and 9.
- Member States shall ensure that when determining the type and level of administrative fines and other administrative measures, NRAs take into account all relevant circumstances, including, where appropriate:
  - a) the gravity and duration of the infringement;
  - b) the degree of responsibility of the person responsible for the infringement;
  - c) the financial strength of the person responsible for the infringement, as indicated, for example, by the total turnover of a legal person or the annual income of a natural person;
  - d) the importance of the profits gained or losses avoided by the person responsible for the infringement, insofar as they can be determined;
  - e) the level of cooperation of the person responsible for the infringement with the competent authority, without prejudice to the need to ensure disgorgement of profits gained or losses avoided by that person;
  - f) previous infringements by the person responsible for the infringement;
  - g) measures taken by the person responsible for the infringement to prevent its repetition; and
  - h) the overlapping of criminal and administrative proceedings and fines for the same breach against the responsible person.
- ACER may develop contacts and enter into administrative arrangements with supervisory authorities, international organizations, and the administrations of third countries in particular with those impacting the EU energy wholesale market to promote the harmonisation of the regulatory framework.<sup>32</sup>

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<sup>32</sup> <https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX%3A32024R1106>

## 4. CONCLUSIONS

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Analysing noted differences in the legal frameworks and penalty regimes related to EnC REMIT in the CPs, and the lack of national and centralized monitoring competencies, leads to the conclusion that further improvement of the legal frameworks is needed.

There are several key areas where development is needed, especially as many CPs are engaging in market coupling activities with Member States.

The first and indispensable condition for ensuring effective market monitoring is the provision of the necessary powers to NRAs. Therefore, CPs are recommended to perform a gap analysis which would identify provisions in their current legal frameworks that prevent NRAs from having adequate investigation and enforcement powers required for consistent REMIT implementation, with emphasis on the competence to impose penalties. Based on analyses, the CPs are recommended to initiate amendments to the legal framework to ensure adequate powers to the NRA.

While the implementation of REMIT light in the CPs is a significant step forward in ensuring the integrity and transparency of wholesale energy markets, the essential part is still missing in the EnC acquis – proper market monitoring and surveillance mechanisms ensured by data reporting and centralized data analyses.

Bearing in mind that several CPs are currently undertaking activities to couple their electricity markets with neighbouring markets, further improvements of the EnC acquis and CPs' legal frameworks related to should accompany market integration activities. Coupled markets need more sophisticated and deep market monitoring, thus data reporting and surveillance performed by ACER also for CPs will be crucial efficient market functioning.

In light of lessons learned from the EU implementation of REMIT and ongoing electricity market integration efforts, Energy Community institutions is assessing the possibilities of extending ACER's competencies to the CPs, through adaption and adoption of full REMIT framework in the EnC. In addition, EU REMIT envisages the possibility for the conclusion of contracts and administrative arrangements between ACER and supervisory authorities, international organisations, and the administrations of third countries in order to promote the harmonisation of the regulatory framework. Those arrangements may concern aspects of common interest, such as methodologies of data collection, analysis and assessment of data or other information, and other areas of expertise.<sup>33</sup> This process could take place in several steps, depending on the speed of market coupling between CPs and EU Member States.

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<sup>33</sup> <https://eur-lex.europa.eu/legal-content/EN/TEXT/?uri=CELEX%3A32024R1106>