

Memorandum of Understanding between the

Energy Agency (Agencija za energijo)
Strossmayerjeva ulica 30
2000 Maribor,
Represented by Director, Ms Duška Godina

And

**BSP Regional Energy Exchange (BSP Regionalna Energetska Borza
d.o.o.)**
Dunajska cesta 156
1000 Ljubljana,
Represented by Director, Mr Anže Predovnik

Concerning cooperation and coordinated monitoring of the wholesale electricity markets, the sharing of information and data under Regulation (EU) No. 1227/2011 of the European Parliament and the Council on 25 October 2011 on wholesale energy market integrity and transparency

(English version, published purely for information purposes.)

The Energy Agency and the BSP Regional Energy Exchange

Having regard,

- 1 On 8 December 2011, the EU adopted new stringent rules on wholesale energy trading. Regulation (EU) No. 1227/2011 of the European Parliament and the Council on 25 October 2011 on wholesale energy market integrity and transparency (OJ, 8 December 2011, hereinafter referred to as REMIT) introduces a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market manipulation and insider trading.
- 2 Recital 17 of REMIT provides that efficient market monitoring at the EU level is vital for detecting and deterring market abuse on wholesale energy markets. Close cooperation and coordination between the Agency for the Cooperation of Energy Regulators (ACER) and national regulatory authorities (NRAs) on the one hand, and between NRAs and persons professionally arranging transactions (in this case energy exchanges) on the other hand constitute a suitable organizational structure that knowledge and experience from operating electricity and gas markets in individual EU Member State are used to ensure adequate monitoring and transparency of energy markets.
- 3 According to Article 7(2) of REMIT, NRAs cooperate at a regional level and with ACER in carrying out the monitoring of wholesale energy markets under Article 7(1) of REMIT; NRAs may also monitor trading activity in wholesale energy products at national level.
- 4 According to Article 11 of REMIT, REMIT shall be without prejudice to the obligations of Member States relating to their processing of personal data under Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data or the obligations of ACER, when fulfilling its responsibilities, relating to its processing under Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data.
- 5 According to Article 12(1) of REMIT, the Energy Agency shall ensure the confidentiality, integrity and protection of the information received pursuant to Article 4(2), Article 7(2), Article 8(5), or Article 10 of REMIT, and takes all necessary measures to prevent the misuse of such information.

- 6 According to Article 13(1) of REMIT, NRAs shall ensure that the prohibitions set out in Article 3 of REMIT (prohibition of insider trading) and Article 5 (prohibition of market manipulation) and the obligation set out in Article 4 of REMIT (obligation to publish inside information) are applied.
- 7 According to Article 15 of REMIT, any person professionally arranging transaction in wholesale energy products who reasonably suspects that a transaction might breach Articles 3 or 5 shall notify the NRA without further delay. In addition, persons professionally arranging transaction in wholesale energy products shall establish and maintain effective arrangements and procedures to identify breaches of Articles 3 or 5.
- 8 According to Article 16(4)(b) of REMIT, any decision as regards the appropriate action to be taken to remedy any breach found shall be the responsibility of the NRA concerned.
- 9 According to Article 17(1), any confidential information received, exchanged or transmitted pursuant to REMIT and this agreement are subject to the conditions of professional secrecy set out in Article 17(2) to 17(4) of REMIT. According to Article 17(4) of REMIT, without prejudice to cases covered by criminal law, the Energy Agency may use the received confidential information only in the performance of its duties and for the exercise of its functions.
- 10 The most expedient way to define the scope and practical terms of implementing the tasks and cooperation foreseen in REMIT between NRAs (the Energy Agency) and persons professionally arranging transaction in wholesale energy products (BSP Regional Energy Exchange) is a Memorandum of Understanding.

Have reached the following Memorandum of Understanding (MoU):

Chapter 1 General principles and scope

Article 1

General principles and scope

- 1 Without prejudice to the provisions set forth by EU and national legislation, the purpose of this MoU is to define scope and manner of cooperation under Articles 7, 13 and 15 of REMIT between NRA (the Energy Agency) and person professionally arranging transaction (the BSP), with the aim of promoting an effective and coordinated monitoring of wholesale energy markets.
- 2 The purpose of this MoU is set out the content and procedures that the signatories of this MoU intend to follow. Nothing in this MoU is intended to restrict, extend or alter the powers, functions or duties of the Energy Agency or the BSP as assigned under applicable law.
- 3 The cooperation between the Energy Agency and the BSP is based on the principle of cooperation. The Energy Agency and the BSP shall cooperate in the spirit of mutual trust and understanding in order to best fulfil their respective functions, as established in REMIT and other applicable legislation.

Chapter II Cooperation and coordination

Article 2

Cooperation on market monitoring

- 1 The Energy Agency and the BSP agree that the implementation of surveillance of trading in wholesale energy markets at an organized market place is a step forward to effective monitoring of wholesale energy markets, which by introducing appropriate upgrades follows markets development and gives an important contribution to the prevention and detection of market abuses.
- 2 According to Article 15 of REMIT, the BSP (as a person professionally arranging transactions) shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or Article 5 of REMIT. Additionally, the BSP shall without delay notify the Energy Agency if the BSP reasonably suspects that a transaction with wholesale energy products might breach Article 4 or Article 5 of REMIT. The BSP decides on case-by-case basis if there are reasonable grounds to suspect that acts in breach of REMIT are being, or have been, carried out.

- 3 Notification by the BSP to the Energy Agency of any suspected breach shall include information on all relevant circumstances regarding the suspected breach.
- 4 The details of the notification duty are described in Article 3 of this MoU.
- 5 Persons responsible for supervision and person responsible for market monitoring from the Energy Agency, and persons responsible for market monitoring from the BSP meet at least twice a year with the aim of exchanging experience and discussing current issues and new developments with respect to wholesale markets monitoring. Topics of particular interest for such meetings are related to the developments in trading conducts, changes in market rules, development of market practices and changing of experiences from previous cases.
- 6 The persons referred to in the previous paragraph, meet more often if necessary, or remain in contact for information exchange and clarifications related to current developments in the wholesale energy markets and their monitoring.

Article 3
Notification

- 1 According to Article 15 of REMIT, the BSP without any further delay with reference to Article 2(2) of this MoU notify the Energy Agency if it has reasonable grounds to suspect that acts in breach of Article 3 or 5 of REMIT are being, or have been, carried out.
- 2 Notifications by the BSP to the Energy Agency on acts which breach the prohibition of market manipulation or insider trading in the wholesale energy markets, shall include, to the extent possible, the following information:
 - a. a description of the transaction(s) and/or order(s) to trade concerned;
 - b. the reasons for suspecting that the transaction(s) and/or order(s) might constitute market abuse;
 - c. in which Member State the suspected breach is being, or has been, carried out;
 - d. identities of persons carrying out transaction(s) and/or order(s) to trade
 - e. identities of any persons known to be involved in the transaction(s) and/or order(s);
 - f. capacity in which the person performing the transaction(s) and/or order(s) to trade;
 - g. identity of the person making the notification;

- h. further information which may be of significance.
- 3 Notifications by the BSP to the Energy Agency in accordance with Article 15 of REMIT shall be submitted via secure communication channel. For this purpose, information are submitted through the web form for Suspicious Transaction Reporting (STR) available on the ACER's website.
 - 4 If the web form is not available, the data referred to in paragraph 2 of this Article are submitted by e-mail with encrypted message. Upon receipt of the notification, the person that is responsible for receiving notifications in the Energy Agency with the encrypted electronic message shall confirm receipt of the notification.
 - 5 Encrypted messages referred to in the preceding paragraph shall be submitted to the e-mail address determined by the Energy Agency. The Energy Agency shall appoint the person responsible for receiving notifications, and the BSP the person responsible for notification. The BSP and the Energy Agency shall exchange information on responsible person and e-mails. If responsible persons or e-mails change, the other signatory is informed without delay. For encryption of messages, the responsible persons for receiving notifications and for informing exchange digital certificates of public keys.

Article 4

Request for submitting information, data, documents, evidence, and clarifications

- 1 1 According to Article 7(2) of REMIT and Article 434 of the Energy Act (Official Gazette of the Republic of Slovenia, Nos, 17/14 and 81/15), the Energy Agency may monitor trading activity in wholesale energy products at national level.
- 2 In the case of suspected breaches of the provisions of REMIT, and for monitoring wholesale energy markets, the Energy Agency may request for additional information, data, documents, evidence, and clarifications from the BSP related to alleged infringement or product traded on the BSP.
- 3 For the purpose of control and monitoring of wholesale energy markets, the Energy Agency in accordance with the applicable legislation may obtain from the BSP other information, documents and evidence, which are available to the BSP.
- 4 Information, data, documents, and clarifications provided are submitted to the Energy Agency safely, so that are not disclosed to unauthorized persons. The exchange of information is carried out

according to the procedure and in the manner determined in Article 5 of this MoU.

Article 5
General procedures for the cooperation

- 1 The Energy Agency and the BSP establish smooth and effective communication channels for the proper compliance with the objectives of this MoU at all times.
- 2 The Energy Agency and the BSP shall each nominate a liaison officer for the purposes of cooperation undertaken under this MoU, exchange contact details of their liaison officers and keep the contact details up to date.
- 3 Liaison officers of the Energy Agency and the BSP may be also persons responsible for receiving notifications or informing according to Article 3(5) of this MoU.
- 4 The Energy Agency and the BSP according to applicable EU legal acts and national legislation in force shall introduce the necessary measures to ensure the confidentiality of commercial and other confidential information exchanged in accordance with this MoU.
- 5 Except for the cases for which under this MoU secure communication channel is required, the liaison officers depending on the subject matter determine the most efficient way to exchange information, data, documents, evidence and clarifications, which may be in written or oral form.

Chapter III
Professional secrecy

Article 6
Professional secrecy

- 1 According to Article 17(1) of REMIT, any confidential information, data, documents, evidence, and clarifications received, exchange or transmitted pursuant to REMIT and this MoU shall be subject to the conditions of professional secrecy laid down in Article 17(2) to 4 of REMIT.
- 2 Shared information, data, documents, evidence, and clarifications within the scope of this MoU received by the BSP, shall be used exclusively for the purpose for which they were transmitted.

**Chapter IV
Final provisions**

Article 7
Publication

- 1 The Energy Agency and the BSP agree to publish this MoU on their websites.

Article 8
Amendments to the MoU

- 1 The Energy Agency and the BSP may by common consent make amendments to this MoU. The amendments shall be published on their websites.

Article 9
Entry into effect and termination

- 1 This MoU shall enter into effect on the date of its signing by the legal representatives of the Energy Agency and the BSP.
- 2 This MoU shall apply for an unlimited period of time. It may be terminated by any of the signatories by sending a registered mail letter with a 30 days' notice period.

Article 10
Copies

- 1 This MoU has been executed in 2 (two) original copies, of which each party shall receive 1 (one) original copy.

Ljubljana, on _____ Maribor, on _____

For the BSP Regionalna
Energetska Borza d.o.o.

For Agencija za energijo

Anže Predovnik,
Director

Mag. Duška Godina,
Director