

<b>Title:</b> REMIT Enforcement regime and Criminal Sanctions. <b>PIR No:</b> : BEIS009(PIR)-19-ESNM <b>Original IA/RPC No:</b> DECC0164 <b>Lead department or agency:</b> BEIS <b>Other departments or agencies:</b> None  <b>Contact for enquiries:</b> <a href="mailto:Felix.Elias@beis.gov.uk">Felix.Elias@beis.gov.uk</a>	<b>Post Implementation Review</b>
	<b>Date:</b> 20/08/2019
	<b>Type of regulation:</b> EU
	<b>Type of review:</b> Statutory
	<b>Date measure came into force:</b> 29/06/2013      23/03/2015
	<b>Recommendation:</b> Keep
	<b>RPC Opinion:</b> N/A

### 1. What were the policy objectives of the measure?

This PIR is concerned with evaluating two policies pertaining to the EU regulation on energy market and integrity and transparency (REMIT):

1. The Electricity and Gas (Market Integrity and Transparency) Regulations 2013 giving Ofgem (Office of Gas and Electricity Markets) the necessary powers to enforce the EU's REMIT regulation (2011). REMIT aimed to promote the confidence of market participants that wholesale energy prices are open, fair and competitive (by increasing transparency of transactions), explicitly prohibiting market abuse such as market manipulation, attempted market manipulation and insider trading.
2. In 2015, BEIS introduced the REMIT Criminal Sanctions to give Ofgem enhanced enforcement powers by introducing sanctions for insider dealing and market manipulation in energy markets in line with those for financial trading. This addressed a gap in the criminal framework for market regulation around commodity trading.

### 2. What evidence has informed the PIR?

There is currently a lack of evidence to provide a meaningful evaluation of the two measures. The review was carried out by BEIS officials using the following evidence:

- Qualitative evidence from discussions with Ofgem's REMIT team via phone and email.
- Findings from industry (such as European Federation of Energy Traders (EFET) public papers on REMIT implementation, The Agency for the Cooperation of Energy Regulations (ACER) and Ofgem's state of the market report).
- Number of alerts and investigations carried out by Ofgem to assess how often the enforcement powers were used. The data was provided by Ofgem's REMIT team.
- A survey sent via email to a targeted group of industry market participants, who are subject to REMIT and supply Ofgem with information. The survey sought to measure the change in confidence that traders feel now compared to before the enforcement regime came in and the estimated costs incurred with conforming to the new reporting obligations. The survey received only two responses out of 10 market participants, so we could not draw any meaningful conclusions. The lack of response from the market participants may indicate that they do not have significant concerns about the enforcement powers and their impacts. No further attempts were made to collect this information, as we didn't deem it proportionate given the low cost to business of the measure.

- Statistics and reports on liquidity in the wholesale electricity market produced by Ofgem, such as churn rates and bid-offer spreads. Liquidity can be seen as a proxy for market confidence.

Although the available evidence is limited, we believe a low-evidence review is justified in this case because the measures were not expected to have high impact on individual market participants and were not considered contentious. At the time of implementation, it was estimated that the costs imposed on businesses would amount to a maximum of £205,000 one off cost in the first year to set up equipment and information reporting. Subsequent, on-going costs of information reporting were estimated at £66,000 per annum. We were unable to find evidence on the accuracy of these estimates.

- Ofgem's REMIT team advised that approximately 12 investigations have been opened under the regulation to date, but so far none have led to enforcement action. At the time of writing, there are three open investigations which are at an advanced stage but have not yet reached maturity.
- Therefore, there is low evidence of direct impact. It would be more appropriate to carry out an evaluation when the policy has been in place for a longer period, as by this time it is likely that more open investigations will have matured and fines imposed which we can measure.

At the next mandatory review in three years, we expect that there will be a stronger evidence base to draw upon in relation to the volume and outcome of investigations under these powers. After EU exit (either without a deal or at the end of any implementation period), it is anticipated that the requirements of the REMIT regime will continue as retained EU law subject to appropriate modification. However, measuring changes in market confidence due to the policies under review will continue to be difficult – especially as there are other policies in place to promote confidence and liquidity such as Secure & Promote which came into place in 2014, making it difficult to attribute any changes to these two individual policies.

### **3. To what extent have the policy objectives been achieved?**

The original REMIT implementation aimed to promote confidence in the wholesale market. Whilst there is no direct data on market confidence, liquidity (e.g. churn rates) is sometimes used as a proxy. Churn rates have mainly remained stable, seeing only a marginal increase since the introduction of the enforcement regime policy in 2013, which could imply that the implementation has not adversely impacted confidence. We cannot measure to what extent these individual policies played a part in any changes, as structural changes and other policies such as Secure & Promote came in soon after. There is also no counter-factual for what would have happened in the absence of REMIT to compare against.

After talks with Ofgem, it holds the same opinion that the link to any changes in churn rates cannot be attributed to either of the two policies that are being evaluated. It also believes that these two policies are too early in their life cycle to be evaluated.

The two responses received from our industry survey resulted in one participant answering that their confidence had seen a slight increase since these policies had been introduced and costs estimated were close to what had been incurred. While the other respondent, mainly answered that they were not sure if they were more or less confident now. Similar answers were received on the estimated costs from this participant. Given the low number of responses and the somewhat opposing answers, we cannot draw any conclusions this survey.

The enhanced enforcement measures, added to the original REMIT enforcement regime implementation, brought sanctions in line with those for financial trading. This ensures that there

are dissuasive penalties in place, both financial and imprisonment (with a term not exceeding two years) for all types of improper conduct, and that Ofgem has powers for enforcement.

Measuring the impact these regulations have on deterring market actors from market manipulation is also difficult, as we would not expect to see a large measurable impact. Because market abuse/manipulations are hidden from view until investigated and investigations take time, it is challenging to establish both the impact of this measure and the counter-factual of prevalence before the enforcement regime came in. This does not necessarily mean that there is no impact coming from these regulations, just that the impact is not measurable at this point.

These new criminal sanctions have not been used to prosecute any market participants to date although some investigations are ongoing. As more investigations reach maturity, the measures may begin to be used and the evidence from these could help to inform the next review.

Sign-off for Post Implementation Review: Chief economist/Head of Analysis and Minister

***I have read the PIR and I am satisfied that it represents a fair and proportionate assessment of the impact of the measure.***

Signed: Kwasi Kwateng

Date: 20/08/2019

## Further information sheet

Please provide additional evidence in subsequent sheets, as required.

### 4. What were the original assumptions?

The original assumptions behind REMIT were that it would promote confidence (by increasing transparency) that wholesale energy prices are set in an efficient manner, and that market actors cannot make profits from market abuse. As National Regulatory Authorities would have the powers to monitor and fine any participants that were found in breach, this would act as a deterrent to market abuse. By affording the adequate powers to Ofgem to enforce REMIT, this would have the same assumptions attached.

Under Article 18 of REMIT the UK is responsible for a domestic enforcement/sanction's regime for breaches of REMIT. Additional powers were required to ensure the NRA, in the UK's case, Ofgem, was as effective as possible in preventing market manipulation and insider trading.

### 5. Were there any unintended consequences?

We have found no evidence of unintended effects at the present time, such as potential barriers to market, or an overly burdensome reporting process in general. Ofgem were not able to identify any unintended consequences. Results from the survey of market participants were not able to shed any light on whether any consequences had surfaced because of these policies being implemented.

### 6. Has the evidence identified any opportunities for reducing the burden on business?

Stakeholder feedback received by Ofgem suggests that the UK has implemented a less burdensome regime in submitting data for the enforcement of REMIT than other EU member states, in our case supplying information to Ofgem and other Registered Reporting Mechanisms (RRM's). Ofgem did not identify any opportunities for reducing the burden on business. Survey results didn't provide any evidence on opportunities for reducing burdens on business.

### 7. For EU measures, how does the UK's implementation compare with that in other EU member states in terms of costs to business?

REMIT implementation is standardised across member states, as everyone is funnelling into a shared central database in terms of data collection and monitoring, and the core components of implementation are effectively standardised. However, NRAs share competency with the Agency for Cooperation of Energy Regulators (ACER) on monitoring and investigation, and NRAs have a mandate for enforcement action. EFET noted issues discussed below around implementation of REMIT across Europe.

1. In many, the NRA member states rules and jurisdictions are not fully aligned with national requirements, which can increase the burden to maintain the market participants registrations (specific mention of Germany is made). Due to the practice of 1 person having access to register on behalf of the participant, these breaks from standardised rules brings into question the 'level-playing field' across Europe.
2. The only mention of the UK was that in contrast with Denmark, "the Danish NRA must approve every single submission for an update or a corporate structure relationship registration, which makes the registration process very time-consuming (this is not the case in the UK)."