

**Multilateral Memorandum of Understanding
MoU**

**between the Nordic and Baltic National Regulatory
Authorities (NRAs) and Nord Pool Spot (NPS)**

concerning

**cooperation and coordination of market monitoring,
information sharing and investigation/enforcement
under Regulation (EU) No. 1227/2011 of the European
Parliament and of the Council on wholesale energy
market integrity and transparency (REMIT)**

THE SIGNATORIES OF THIS MULTILATERAL MEMORANDUM OF UNDERSTANDING,

Whereas

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 of the Council on wholesale energy market integrity and transparency (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 Union level is vital for detecting and deterring market abuse on wholesale energy markets. Close cooperation and coordination between the Agency and NRAs on the one hand, and NRAs and persons professionally arranging transactions (in casu NPS as a regulated market) on the other hand is therefore necessary to ensure proper monitoring and transparency of energy markets.
3. According to Article 7(2) of REMIT, NRAs shall cooperate at regional level in carrying out the monitoring of wholesale energy markets. 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 the Agency, when fulfilling its responsibilities, relating to its processing of personal data 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, NRAs shall ensure the confidentiality, integrity and protection of the information which they receive pursuant to Articles 4(2), 7(2) or 8(5) or Article 10 of REMIT and shall take steps to prevent any misuse of such information.
6. According to Article 13(1) of REMIT, NRAs shall ensure that the prohibitions set out in Articles 3 (prohibition of insider trading) and 5 (prohibition of market manipulation) and the obligation set out in Article 4 (obligation to publish inside information) are applied.
7. According to Article 15 of REMIT, any person professionally arranging transactions in wholesale energy products (in casu NPS) who reasonably suspects that a transaction might breach Article 3 or 5 shall notify the national regulatory authority without further delay. Further, such persons shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or Article 5.
8. According to Article 16(1) of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. NRAs shall cooperate with the Agency

and with each other, including at regional level, for the purpose of carrying out their duties in accordance with REMIT.

9. According to Article 16(4)(b) of REMIT, any decision as regarding the appropriate action to be taken to remedy any breach found shall be the responsibility of the NRA concerned;
10. According to Article 17(1) of REMIT, any confidential information received, exchanged or transmitted pursuant to REMIT and this MoU shall be subject to the conditions of professional secrecy laid down in Article 17(2) to 17(4) of REMIT. According to Article 17(4) of REMIT, without prejudice to cases covered by criminal law, NRAs which receive confidential information pursuant to REMIT may use it only in the performance of their duties and for the exercise of their functions.
11. The most expedient way to define the scope and practical terms of implementing the tasks and cooperation foreseen in and allowed under REMIT between the NRAs and a “person professionally arranging transactions” (in casu NPS) is a Memorandum of Understanding (MoU),

HAVE REACHED THE FOLLOWING UNDERSTANDING:

Chapter 1

General principles and scope

Article 1

General principles and scope

1. Without prejudice to the provisions set forth by the EU legislation, the purpose of this MoU is to define the scope and practical terms of the cooperation under Articles 13, 15 and 16 of REMIT between the undersigning national energy regulatory authorities (hereinafter referred to as “NRAs”) and between the undersigning NRAs and Nord Pool Spot (hereinafter referred to as NPS) as “a person professionally arranging transactions” (a regulated market) in accordance with Article 7(2) of REMIT with the aim of promoting an effective, efficient and coordinated monitoring of wholesale energy markets as referred to in REMIT and the ACER guidance.
2. The purpose of this MoU is to set out the procedures that the undersigning parties intend to follow. This MoU is not intended to create additional obligations or to replace or amend existing legislation and regulation. Nothing in this MoU is intended to restrict, extend or alter the powers, functions or duties of the NRAs or NPS.
3. The cooperation between the NRAs and NPS shall be based on the following principles:
 - a. *Distribution of powers.* The clauses of this MoU shall be interpreted and applied in such a way as to ensure that the distribution of powers between the NRAs and NPS set forth by law, and in particular by REMIT, is not altered;

- b. *Mutual collaboration.* Both the NRAs and NPS shall cooperate in order best to fulfil their respective functions, as established in REMIT and other applicable legislation, and in the spirit of mutual trust and understanding.

Chapter 2

Cooperation and coordination

Article 2

Cooperation on market monitoring (Art. 7 and Art. 15 of REMIT)

1. According to Article 7(2) of REMIT, NRAs shall cooperate at regional level and with the Agency in carrying out the monitoring of wholesale energy markets. In respect of this duty, the undersigning NRAs to this MoU shall meet at regular intervals – e.g. through the NPS regulatory council – to discuss relevant market monitoring activities to detect market abuse and to discuss information sharing between the undersigning parties in specific cases. Further, the NRAs shall keep each other informed of enforcement measures and administrative/criminal decisions made at national level to enhance a coordinated and consistent regional approach to case handling.
2. According to Article 15 of REMIT, NPS (as a person professionally arranging transactions) shall establish and maintain effective arrangements and procedures to identify breaches of Article 3 or Article 5. Additionally, NPS shall notify the relevant NRA if NPS reasonably suspects that a transaction might breach Article 3 or Article 5. NPS decides on a case-by-case basis if there are reasonable grounds for suspicion concerning a transaction. Examples of possible reasonable suspicion are set in ACER's Guidance. The indications given in ACER's Guidance are neither exhaustive (a particular transaction may be suspicious even if it matches none of the indications) nor determinative (a transaction may not necessarily be suspicious simply because it matches one or more of the indications).
3. The NRAs and NPS agree that the existing surveillance department of NPS is an effective instrument to identify possible market abuse, and that the work of the surveillance department should at all times be supported and developed according to market needs and regulatory requirements.
4. The NRAs and NPS agree that the duty to notify the NRA should be interpreted as a duty to first and foremost notify the NRA of the country/market area/bidding area where the suspicious transaction has its main effect. The competent NRA will then notify the other NRAs of the case at hand and the outcome of the investigation of the case. In case there is uncertainty as to which NRA is competent to handle the suspected breach, the relevant NRAs should resolve the question of jurisdiction amongst themselves taking into account territorial, delivery-point rule or financial effect (which is estimated by formula – market price × traded volume in power market by NPS) of the suspicious transaction.

5. Notifications by NPS to the competent NRA of any suspected breach of REMIT shall include information on all relevant circumstances regarding the suspected breach.
6. The details of the notification duty and the duties of the NRAs are described in Article 4.

Article 3

NRA Cooperation at Union, regional and national level (Art. 16(1) of REMIT)

1. According to Article 16(1) of REMIT, the Agency shall aim to ensure that NRAs carry out their tasks under REMIT in a coordinated and consistent way. Also, NRAs shall cooperate with each other, including at regional level, for the purpose of carrying out their duties in accordance with REMIT.
2. NRAs may agree with each other on specific conditions to implement the cooperation on wholesale energy market monitoring at regional level in order to reflect regional or national specificities.
3. Market monitoring experts from the NRAs shall together with market monitoring experts from NPS meet at least yearly with the aim of exchanging experiences and discussing current issues and new developments of mutual interest with respect to wholesale energy market monitoring. Topics of particular interest for such meetings may include matters such as developments in trading conduct and market practices, experiences from concluded disciplinary matters and developments in market rules.

The frequency and the organisation of such meetings shall be mutually agreed on. Where appropriate, officials from national financial authorities and other relevant authorities may be invited to participate in such meetings.

Article 4

Notifications by NPS to the competent NRA of suspected breaches of REMIT (Art. 15 of REMIT)

1. According to Article 15 of REMIT, NPS – as a person professionally arranging transactions - shall without further delay with reference to article 2.2 of this MoU notify the NRA where 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 NPS to the competent NRA where NPS suspects that acts are being, or have been, carried out on wholesale energy markets which breach the prohibitions of market manipulation or insider trading, shall, to the extent reasonably possible, include the following information:

- a. a description of the transaction(s) and/or order(s) concerned;
 - b. the reasons for suspecting that the transaction(s) and/or order(s) might constitute market abuse;
 - c. in which Member State and market area the suspected breach is being, or has been, carried out and has its distortive effects.
 - d. identities of persons carrying out transaction(s) and/or order(s);
 - e. identities of any other 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) acts;
 - g. identity of the person making the notification;
 - h. indication of whether the information contained in the request is confidential.
 - i. further information which may be of significance.
3. Notifications by NPS to the competent NRA in accordance with Article 15 of REMIT shall be made to the NRA by email to the email address specified by the NRA for this purpose, and shall, without prejudice to national agreements and legislation, include the same information as listed in the second paragraph of this Article. Notifications under Article 15 are without prejudice to national legislation.
4. The competent NRA shall confirm to NPS that it has received a notification according to Article 15 of REMIT. NPS shall inform the market participant(s) in question that a notification has been made according to Article 15 of REMIT, and the NRA receiving the notification from NPS shall no later than 5 working days from the date when notification from NPS was received inform the same market participant(s) that it has received such a notification under REMIT and will look further into the matter. The notification to the market participant under investigation may be postponed, however, to protect the investigation so that notification is only made when formal investigation proceedings are commenced.

The NRA(s) commencing investigations of suspected breaches of REMIT pursuant to Article 16(4)(b) - based on a notification from NPS - shall keep NPS informed about the proceedings and outcome of the investigation.

Article 5

Investigation and enforcement of market abuse **(Art. 13 (1) (2), Art. 14 and Art. 18 (of REMIT))**

1. According to Article 13(1) of REMIT, the competent NRA(s), where it (they) consider(s) that a possible breach of REMIT has occurred, has (have) the power to investigate whether REMIT has been breached and in which Member State(s) the breach took place. For breaches involving several countries the relevant NRAs shall decide on work plan of investigation, on competent NRA if needed, and on preliminary terms of investigation.
2. According to Article 13(1) of REMIT the competent NRA(s) may - where appropriate - exercise its (their) investigatory powers in collaboration with organised markets (in casu NPS) or other

persons professionally arranging transactions. This article shall not preclude NPS from carrying out its own investigation on possible breaches of REMIT.

The undersigning parties agree that NPS, at its own discretion may participate in an investigation of NRA(s) by providing information and data including its investigation and/or findings about the possible breach of REMIT at requests of the competent NRA(s). The investigation shall be exercised in conformity with national law and under the leadership of the competent NRA(s) initiating the investigation. In the event a NRA asks NPS for confidential information relating to a country within such NRA's jurisdiction, such request shall be accompanied with information to the NRA of the country the information relates to and also to the NRA of the country where the person professionally arranging transactions in wholesale energy products (in casu NPS) is licensed. In the event a NRA asks for confidential information relating to a country or market participants outside own jurisdiction, the NRA must request and get information via NVE.

3. Penalties applicable to infringements of REMIT are to be implemented at national level according to Article 18 of REMIT. This MoU shall have no influence on this national prerogative of Member States. Also, it shall have no influence on the prerogative of Norway to implement rules on penalties applicable to infringements in accordance with EEA practices.
4. The NRA(s) may exercise its (their) powers directly or in collaboration with other authorities or by application to their competent judicial authorities. This MoU is without prejudice to these powers which are exercised in conformity with national law.

The NRAs and NPS agree that any formal administrative and criminal decisions in relation to market abuse (insider trading and market manipulation) such as the issue of injunctions to cease activities contrary to REMIT, the imposition of criminal or administrative fines, the request to a court or a competent authority to impose a temporary prohibition of professional activity or to freeze or sequester assets, should be done by the competent NRA(s) – or national courts - under REMIT.

5. The prerogative of the NRAs and/or national courts in matters of enforcement shall be without prejudice to the right of NPS to make its own screening and assessment and to sanction market participants that have without any reasonable doubt been in breach of NPS' market conduct rules. The exercise of such disciplinary powers shall at all times be done in a proportionate manner and in accordance with published market conduct rules.
6. The competent NRA (or NRAs) is the NRA that has competence according to applicable principles of jurisdiction – but the undersigning parties agree that the “competent national regulatory authority” should initially be understood as the NRA of the territory (market) where the breach of REMIT has its main effects (effects principle) as referred to in article 2.4 under this MOU.
7. The right of appeal of an affected party against a formal decision of the competent NRA should be secured at national level by Member States according to Article 14 of REMIT and is without prejudice to this MoU.
8. The competent NRA(s) may at all times communicate with one or more NRAs to discuss its legal assessment of a suspected breach of REMIT. Such discussions between NRAs shall be subject to

the conditions of professional secrecy laid down in Article 17(2) to (4) of REMIT and in Article 8 of this MoU.

Article 6

General procedures for the cooperation

1. The NRAs and NPS shall establish smooth and effective communication channels for the proper compliance with the objectives of this MoU at all times.
2. The NRAs and NPS shall each nominate one or more liaison officer(s) for the purposes of cooperation undertaken under this MoU and shall notify any changes to all other parties to this MoU. The NRAs and NPS shall provide the necessary contact details of their liaison officer(s).
3. Depending on the subject of the interaction, the concerned liaison officer(s) will determine the most efficient way of interaction, which may be in written or oral form.

Article 7

Public communication

1. The NRAs shall inform each other prior to any public communication relating to breaches of REMIT. NPS shall inform the relevant NRA prior to any planned public communication under NPS' market conduct rules.
2. If an NRA decides to make public a sanction within the course of its duties under REMIT it shall indicate if the successful outcome of the case has been achieved with the aid of the regional cooperation provided for in REMIT and in this MoU.

Chapter 3

Professional secrecy

Article 8

Professional secrecy (Art. 17 of REMIT)

1. According to Article 17(1) of REMIT, any confidential information received, exchanged or transmitted pursuant to REMIT and in respect of this MoU shall be subject to the conditions of professional secrecy laid down in Article 17(2) to (4) of REMIT.
2. Information shared between NRAs, and between NPS and NRAs, within the scope of this MoU, shall be used exclusively for the purposes permitted by REMIT. NRAs may exchange confidential

information received from NPS for investigatory purposes and NRAs are responsible for the protection of this confidential information without prejudice to EU regulation, national laws and sanctions for breach of confidentiality rules.

Chapter 4

Final provisions

Article 9

Publication

The NRAs and NPS agree to publish this MoU on their respective websites.

Article 10

Amendments to the MoU

The NRAs and NPS may by common consent make amendments or additions to this MoU.

Article 11

Entry into effect and termination

1. This MoU shall enter into force by and between the Parties having signed from the date of the signing
2. This MoU shall be concluded for an unlimited period of time and may be terminated by any of the Parties at any time by giving, at least, 30 days prior written notice to each other.

Lysaker, Norway 7 March 2014



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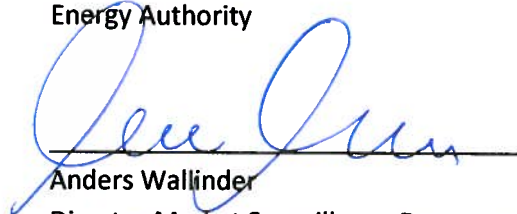
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