

Key Messages

- REMIT Welcomed: increase transparency, trust in the markets and eventually liquidity. But implementation process raises questions and potential concerns
- Entry into force in Dec 2011 with still many key elements missing. While some of them (e.g. registration process, transaction reporting) require delegated acts, market abuse rules and disclosure obligations will be effective from day 1.
- Lack of clarity on definitions of insider information and disclosure obligations: legal uncertainty and higher risks for market parties
- ACER Guidance + effective stakeholder consultation urgently needed
- Fundamental Transparency Guidelines are an essential building block: adoption by comitology should not be delayed further
- No double reporting of transactions (due to EMIR + MiFIR), and no overlapping roles of ACER, NRAs, Financial Regulators & Competition Auth. to be ensured
- Scope of REMIT should not be reduced by MiFID/MAR: physical forwards not be classified as financial instruments ⇒ REMIT, not Fin. Regulation should apply

Open Issues regarding inside information/insider trading:

Definition of Inside Information (Art. 2):

- § Concept of “significantly” affecting prices seems vague and too open for interpretation
- § Relevance of Draft Fundamental Transparency Guidelines to be clarified. A comparable set of Guidelines for Gas is needed.

Obligation to publish inside information (Art.4):

- § “effective” disclosure: what if PXs or TSOs platforms are not existing or equipped? Companies websites seem to be the only suitable alternative
- § Information ‘belonging’ to a third party (e.g. jointly owned/operated assets, information in hands of customers shared with their suppliers on confidential basis): implication for being able (or not) to trade + how to solve potential confidentiality issues?

Exemptions:

- § Art. 3.4 – Exemption on insider trading: what is meant with “to cover the immediate physical loss” and with “contractual obligations”? Same interpretation for power and gas?
- § Art. 4.2 Exceptional delay of inside information: what are “legitimate interests”?