



REPUBLIKA E SHQIPËRIË

ENERGY REGULATORY AUTHORITY

BOARD

DECISION

No. 126, dated 17.05.2021

ON APPROVING THE REGULATION ON WHOLESALE ENERGY MARKET INTEGRITY AND TRANSPARENCY (REMIT)

Based on article 16,19,20, letters “ç” and “d”, article 22,51, point 2, letter “dh” and article 97, point 4 of Law no. 43/2015 “On Power Sector”, as amended; article 16, point 4, letters “a”, “b”, “c”, “ç” and points 5 and 6 of Law no.102/2015 “On Natural Gas Sector”, as amended; article 28, point 1 of Law no. 9887 dated 10.03.2008 “On Protection of Personal Data”, as amended, as well as article 15 and 26 of the “Rules on ERE Organization, Operation and Procedures”, approved with ERE Board Decision, no. 96, dated 17.06.2016, the Energy Regulatory Authority Board (ERE), on their meeting dated 17.05.2021, after reviewing the report Protocol no. 68/5 and the additional Information no. 68/5 – (1), dated 14.04.2021, prepared by the Technical Directories,

Observed that:

- ERE Board decision no. 256, dated 21.12.2020 decided to open the procedure to approve the Regulation on wholesale energy market integrity and transparency (REMIT).
- Following this decision, through official letter protocol no. 1325 dated 31.12.2020, the draft- REMIT Regulation was submitted for opinions and comments to: the Ministry of Infrastructure and Energy, Competition Authority, Distribution System Operator, Transmission System Operator, Albanian Power Corporation (KESH), the Albanian Association of Electricity Suppliers (AAES), Foreign Investors Association of Albania (FIAA), Albanian Renewable Energy Association (AREA), Energy Community Secretariat. The above parties were requested to provide relevant opinions and comments on the draft regulation of REMIT within 30 days of becoming aware.
- The Energy Community Secretariat through official letter dated 12 January 2021 (REGAL/O/jko/01/12-01-2021) welcomed the opportunity offered to contribute to the public consultation opened by ERE, following decision no. 256, dated 21.12.2020 and also provided some suggestions regarding the content of the draft Regulation, as follows:
 - -In Article 1, point 1, the first sentence shall be replaced by the following sentence: “This regulation transposes REMIT Regulation 1227/2011 as approved and adapted for the Energy Community Contracting Parties and sets out the criteria that prohibit abusive practices that may occur and affect wholesale energy markets”.
 - Regarding this first comment of the Secretariat, it is evaluated that the suggestion given regarding this point, shall clearly define that the Regulation drafted by ERE in order to

harmonize the regulatory framework (as one of the responsibilities set out in Article 19 of Law No. 43/2015 “On Power Sector”, as amended) on the development of the wholesale energy (electricity and natural gas) market, aims to transpose REMIT Regulation 1227/2011 as adopted and adapted to the Energy Community Contracting Parties.

-In Article 2, point 1.15, the term “electricity” at the end of the paragraph should be removed. The REMIT Regulation refers both to electricity and gas and should become relevant in relation to TAP. The definition of "energy sector [market]" in point 1.9 correctly is not limited to the electricity market.

Regarding this comment of the Secretariat, it is informed that, as defined in point 1, article 1, the draft Regulation on wholesale energy market integrity and transparency (REMIT), defines the criteria that prohibit abusive practices that may occur and affect wholesale energy markets, including electricity and natural gas. In this draft Regulation, respectively in Article 2, point 1.15 and 1.18, the Transmission System Operator, as well as the Natural Gas Transmission System Operator are defined according to their special area of operation either in the area of electricity, whether in natural gas. For this reason it is judged that the term "electricity" remains unchanged at this point, which corresponds to the definition provided for the Electricity Transmission System Operator according to Law no. 43/2015 "On Power Sector", as amended.

- In addition, the Energy Community Secretariat, also observed that, in relation to penalty levels referred in Article 16 (Administrative Measures and Penalties) it was noted that the reference to penalties provided in Law no. 43/2015 "On power sector", as amended and Law no. 102/2015 “On natural gas sector”, as amended, do not meet the requirements of Article 18 of the REMIT Regulation for effective, dissuasive and proportionate penalties that are able to reflect flexibly the duration and seriousness of the infringement and damages caused to customers and trading. However, the Secretariat acknowledges that further increase of penalty levels for ERE should require legislative changes.
- AAES, through official letter Protocol no. 1 dated 29.02.2021, subject : "Regulation on wholesale energy market integrity and transparency (REMIT)", expressed its positive consideration for the opening of the procedure to approve Regulation on wholesale energy market integrity and transparency (REMIT) and also proposed the following:

-Article 1.21 (Dominant Position) is proposed to be excluded from the Regulation, as it does not comply with the EU Regulation and the EnCS Decision and is not in full compliance with Article 3.5 of Law no. 9121, dated 28.07.2003 “On competition protection”.

Regarding this suggestion of AAES, it shall be clarified that the draft Regulation on wholesale energy market integrity and transparency (REMIT), in Article 2, point 1.21, defines the dominant position as “the position of one or more enterprises, which allows them to be capable act, in terms of supply or demand, independently of the participants others in the market such as: competitors, customers or consumers; referring to point 5, article 3, of Law no. 9121, dated 28.07.2003 “On competition protection”, it is defined that dominant position means “the position of one or more undertakings if they are capable, as

regards supply or demand, to behave in a substantially independent manner with regard to the other participants in the market, such as competitors, clients or consumers.”it is clear that point 1.21 of the Regulation has been correctly adapted and is in line with the definition provided by this Law. Also, regarding the main purpose of the Regulation which sets out the criteria that prohibit abusive practices that may occur and affect wholesale energy markets, it is clarified that the definition of dominant position is necessary due to the fact that it appears as one of forms of abuse that can be used by companies and groups of companies, which directly or indirectly affect or may affect the market, thus violating free and effective competition.

-In relation to Article 1.21 (referring to the content of the definition provided in the official letter Protocol no. 1 dated 29.02.2021, subject "Comments on the approval of the “Regulation on wholesale energy market integrity and transparency (REMIT)” , there is an understanding that although the association refers to Article 1.21, it also considers Article 15 (Right of appeal) of the draft Regulation) AAES states that, in the draft Regulation it is defined that against the decision of the ERE, which finds a violation of the Regulation on wholesale energy market integrity and transparency (REMIT), appeal is not allowed. AAES proposed to not include this article in the Regulation as it substantially restricts the rights of electricity market participants, as defined in point 5, article 16, of Law no. 43/2015 "On Power Sector", as amended.

Regarding the proposal made by AAES, it shall be underlined that the changes reflected in this article simultaneously acknowledge the right to review ERE board decision based on the legislation in force and the right to appeal against the latter, as defined respectively in Article 16, point 6, of Law no. 43/2015 "On Power sector", as amended and article 17, point 3, of Law no. 102/2015 "On natural gas sector", as amended.

- Transmission System Operator (TSO company) submitted at ERE the official letter Protocol no. 47/1 dated 15.02.2021, including comments on opening of procedure to approve the Regulation on wholesale energy market integrity and transparency (REMIT). TSO comments aiming at facilitating the review , can be divided into two groups: comments regarding the language and content. Comments regarding the content are as follows:

-In article 2, of the draft Regulation, TSO proposed that: Point 1.3 (i) becomes 1.3.1 entering into any transaction or placing any product marketing order wholesale energy, which.....:

Regarding this point of the draft Regulation, it is clarified that referring to Article 2, letter (a), of REMIT Regulation no. 1227/2011, it is reasoned that the unchanged remainder of the phrase "issuing an order", in this provision, is in full compliance with what is provided in the REMIT Regulation no. 1227/2011. Also, considering that the Regulation on wholesale energy market integrity and transparency (REMIT) refers to both the purchase and sale of wholesale energy products, that is the reason why replacing the term “issuing an order” with the term “placing an order” would mean applying of this term, only in the purchase of products, as the term order is more related to the purchase process as a whole, while the term "issuing an order" as provided in this provision, refers simultaneously to the purchase and wholesale of energy products.

-In Article 2 of the draft Regulation, TSO proposed that: Point 1.6 " Wholesale energy products-means contracts and documents that are their derivatives, regardless of where and how they are traded”

TSO company proposed to review the translation of the word “Wholesale energy products” according to REMIT Regulation no. 1227/2011, for a clearer explanation of the definition on the derivatives. Regarding TSO proposal it must be explained that point 1.6 of article 2, in the draft Regulation is in full compliance with point (4), of article 2, in REMIT Regulation no. 1227/2011 which provides the definition of "wholesale energy products".

Regarding the derivatives, REMIT Regulation no. 1227/2011, in letter (b), point (4), of article 2, explains the derivatives in relation to electricity or natural gas that is produced, traded or distributed within the European Union (EU) whereas in letter (d) explains the derivatives in relation to the transport of electricity or natural gas in the European Union.

-In article 2, of the draft Regulation, TSO company proposed that: In point 1.11 “Market participant”, the phrase “placing trade orders” shall be changed to “placing orders”.

Regarding this comment from TSO company as well as evidenced in the changes proposed above, respectively in point 1.3 (i), it shall be explained that the unchanged remainder of the phrase "issuance of an order", in this provision is in complete accordance with what is provided in the REMIT Regulation no.1227 / 2011.

In article 2, of the draft Regulation, TSO company proposed that: In point 1.15, "Transmission System Operator", the phrase "natural person" in the definition provided in the draft Regulation on wholesale energy market integrity and transparency (REMIT).

Regarding this comment from TSO company, it must be emphasized that, as defined in point 48, article 3, of Law no. 43/2015 “On Power Sector”, as amended and point 66, article 4, of Law no. 102/2015 "On Natural Gas Sector", as amended, "Transmission System Operator" or "TSO" is a legal person.

-Regarding the definitions in point 1.16 and 1.17, article 2, for “Enterprise” and “Affiliate”, TSO company proposed that in accordance with REMIT Regulation no. 1227/2011, adapted with the Ministerial Council of the Energy Community Decision on January 2018, the terms used in Article 2, points 12 and 13, are:

(12) parent undertaking

(13) related undertaking.

Referring to this comment from TSO company, it is assessed that both terms, "parent company" and "affiliate” are in accordance with the legal terms used in Law no. 9901, dated 14.4.2008 “On entrepreneurs and companies”, as amended.

-In article 3, of the draft Regulation, TSO company proposed that, point 4.1, shall be made: “Transactions completed for the settlement of the obligation that has become due, to buy or sell wholesale energy products, where the obligation has arisen as a result of concluding an agreement or placing an order, before the person in question / mentioned to have received inside information.”

Regarding this comment of TSO company it must be emphasized that point 4.1 of this article has been completely adapted according to the content of REMIT Regulation 1227/2011, therefore the need for further changes is deemed as consumed.

-In article 4, of the draft Regulation, TSO company proposed that point 1 shall be made: "Market participants must publish effectively and in a timely manner the information they possess in relation to the business or undertakings which the market participant in question, its parent company or subsidiary, owns or controls, or for operational matters for which the market participant or enterprise is responsible, whether in whole or partially."

This publication shall include information that is relevant for the capacity and use of facilities for the generation, storage, consumption or transmission of electricity or natural gas, or in connection with the capacity and use of LNG facilities, including the planned or unplanned availability of these facilities".

Regarding this comment of TSO company, it is evaluated that it mostly has a linguistic character (the term enterprise has been replaced with the terms parent company and subsidiary) and aims to facilitate the understanding of this provision.

Regarding article 4 of the draft Regulation, TSO company also proposed that point 2 shall be made: "A market participant may exceptionally delay under its responsibility the disclosure of inside information, so as not to prejudice its legitimate interests, provided that such action not to deceive the public and provided that the market participant is able to ensure the confidentiality of that information and not to make decisions regarding the marketing of wholesale energy products based on that information. In such a situation, the market participant, without further delay, shall ensure the available information together with the reasoning for the delay of its publication to the ERE".

A market participant may delay, under its own responsibility, the disclosure of inside information so as not to prejudice his legitimate interests, provided that such action as not to mislead the public and provided that the market participant is able to ensure the confidentiality of that information and not take decisions of wholesale energy products based on that information. In such a situation, the market participant without further delay will ensure the publication of the information, together with the justification for the delay of its publication to the ERE.

Regarding this comment of TSO company it shall be clarified that the proposed changes in point 2 of article 4, enable a more complete adaptation with point (2), article 4 of REMIT Regulation no. 1227/2011.

-In article 4 of the draft Regulation, TSO company proposed that in point 3, a change in the phrase "statute of the company" shall be made.

Regarding Article 7 of the draft Regulation, TSO company proposed, respectively, in point 2, to change the phrase "The registration of market participants is made without prejudice to the obligations to comply with the applicable trading and balancing rules."

As provided in the third paragraph of article 9, in the REMIT Regulation no. 1227/2011, it shall be emphasized that the provision defined in point 2, of the draft Regulation that is under review, is approximated to the provision of REMIT Regulation no. 1227/2011, therefore the comment of TSO company shall not be taken into account.

-In article 8, of the draft Regulation, TSO company proposed that in this provision in addition to Law no. 9887, dated 10.03.2008, "On the Protection of Personal Data" to also adjoin Law no. 119/2014 "On the Right to Information". Considering that the confidentiality of commercially sensitive information is not provided in Law no. 119/2014 it is considered that its inclusion in this provision is not necessary.

-In article 11, of the draft Regulation, TSO company proposed that in point 4 and 5 to change the term "acts" with "actions".

-In article 14, of the draft Regulation, TSO company suggested to remove the term "political body" from point 3 of this article.

-In article 15, of the draft Regulation, TSO company proposed that: Point 1 of this provision shall be made: Against ERE Board decision, which finds a violation of this Regulation and the application of punitive measures as well as against the decision by which the procedure is terminated due to preliminary issues, the licensee may file an appeal in accordance with the Regulation on the procedures of imposing and reducing the fines. Regarding the decision for the application of the fine, within 30 days from the publication of the decision, an appeal can be made to the competent court in the Republic of Albania.

Regarding this proposal of TSO company as mentioned above, the changes reflected in this article at the same time acknowledge the right to review the decision of ERE based on the legislation in force, as well as the right to appeal to the latter, as defined respectively in article 16, point 6, of Law no. 43/2015 "On Power sector", as amended and article 17, point 3, of Law no. 102/2015 "On natural gas sector", as amended.

-In article 16, of the draft Regulation, TSO company proposed that point 4 of this article shall be changed as follows: "For the violations defined in paragraph 3 of this article, fines from (500 000 ALL) shall be applied to the natural and legal person up to the legal limit defined in the laws mentioned in point 3, of this article "

The proposal of TSO company regarding this point, is considered to help for a clearer definition of the penalties which derive from the violations of point 3, article 16 and it is also referred to article 107, of law no. 43/2015 on Power Sector and article 106, of law no. 102/2015 on Natural Gas Sector.

Regarding point 8, article 16, TSO company proposed that this point shall be changed as follows: "The fine imposed by ERE represents an executive title and shall be executed in accordance with Civil Procedure Code"

Regarding this proposal, it is evaluated that the proposed change of this point in Article 16 of the Regulation, is in alignment with the obligations imposed for the licensees according to point 5, article 107 of law no. 43/2015 and point 6, article 106 of law no.102 / 2015.

- Competition Authority, via official letter Protocol no. 13/2 dated 23.04.2021, ERE Protocol no. 627 dated 27.04.2021 informed that the procedure opened with ERE Board decision no. 256, dated 21.12.2020 " On opening the procedure to approve the regulation on the wholesale energy market integrity and transparency (REMIT)" does not contradict law no. 9121, dated 28.07.2003 "On competition protection", as amended.

- In order that the provisions of the Regulation to be in full compliance with the legislation in force regarding power and natural gas sector, articles 14, 15 and 16, which provide the deadlines for taking the decision and its publication, the right to appeal as well as the administrative measures and fines are mostly reviewed.

Regarding the above, ERE evaluates:

To accept the suggestion of the Energy Community Secretariat for changing point 1, article 1 which becomes:

- Article 1 (Purpose and Scope), point 1: The Regulation on wholesale energy market integrity and transparency (REMIT) 1227/2011 as approved and adapted for the Contracting Parties of the Energy Community and aims to define the criteria that prohibit abusive practices that can occur and affect wholesale energy markets. At the same time the regulation helps in the proper functioning of these markets, taking into account their specific characteristics.

To not accept the suggestion of the Energy Community Secretariat for the amendment of point 1.15, article 2 in the Regulation on wholesale energy market integrity and transparency (REMIT).

To not accept the request of (AAES) on excluding point 1.21, article 2 and article 15, of Regulation on wholesale energy market integrity and transparency (REMIT).

To accept the request of TSO company to change point 1.15, 1.16 and 1.17, of article 2, point 1, 2 and 3, of article 4, point 4 and 5, of article 11, point 3, of article 14, as well as point 4 and 8, of article 16, which become:

- Article 2, point 1.15, Electricity Transmission System Operator - is the legal entity, responsible for the operation, maintenance and development of the transmission system, including interconnections with other cross-border systems, to ensure the long-term ability of the system to meet reasonable requirements for the transmission of electricity.

-Article 2, point 1.16, Parent company - a company, which based on the capital owned in another company or based on an agreement with that particular company, has the right to appoint at least 30 percent of the administrators, members of administrative council or of its supervisory council, or when it receives at least 30 percent of the total votes in the general assembly, it is considered as parent of that company, as defined in Law no. 9901, dated 14.4.2008 "On traders and companies", as amended.

-Article 2, point 1.17, Affiliate - another company which is assessed as controlled by the parent company, as defined in Law no. 9901, dated 14.4.2008 "On traders and companies", as amended.

- Article 3, point 4.1 - Transactions performed in fulfillment of an obligation that has arisen due to the purchase or sale of wholesale energy products when this obligation comes as a result of a concluded agreement, or a trading order, established before the person in question became aware of the inside information.

- Article 4, point 1 - Market participants shall publish effectively and in a timely manner the information they possess regarding the business or companies which the market participant in question, its parent company or the affiliate owns or controls their operational matters for which the market participant or the company is responsible, whether in whole or partially. This publication shall include information relevant to the capacity and utilization of facilities for the production, storage, consumption or transmission of electricity or natural gas, or in connection with the capacity and utilization of LNG facilities, including planned or unplanned availability of these facilities.

Article 4, point 2 - A market participant may exceptionally delay under its responsibility the disclosure of inside information, so as not to prejudice its legitimate interests, provided that such action does not deceive the public and that the market participant is able to ensure the confidentiality of that information and not make decisions regarding the marketing of wholesale energy products based on that information. In such situation, the market participant, without any delay, shall submit at ERE the information together with the reasoning for the delay of its publication.

- Article 4, point 3 - Whenever a market participant or a person employed or acting on behalf of a market participant discloses information relating to a wholesale energy product during the ordinary exercise of the profession or its duties, such as referred in point 2, Article 3 (1), the market participant or person must make the immediate, complete and effective disclosure of that information to the public. In the event of an unintentional disclosure, the market participant must ensure the full and effective disclosure of the information as soon as possible after the unintentional disclosure. This paragraph shall not apply if the person receiving the information has an obligation of confidentiality, regardless of whether such an obligation derives from law, regulation, company statute or any contract.

- Article 11, point 4 - When the ERE suspects that the actions performed in another Contracting Party are affecting the markets or the prices of wholesale energy products in Albania, then it may request from the Energy Community Regulatory Board and the Energy Community Secretariat to ensure that the requirements of the REMIT Regulation apply to that Contracting Party.

- Article 11, point 5 - To ensure a coordinated and sustainable approach to wholesale energy market abuse, ERE shall inform the Competition Authority, the Secretariat and the Energy Community Regulatory Board, when there are reasonable grounds to suspect that there are actions being carried out or have been carried out in the wholesale energy market, which may constitute a violation of competition in the country or in the Contracting Parties.

- Article 14, point 3 - All decisions are taken independently by any political or public body, or any public or private enterprise.

To partially accept the proposal of TSO company regarding the amendment of Article 15 of the Regulation, which becomes:

- Article 15 - 1. Against the decision of the ERE, which finds a violation of this Regulation and the application of punitive measures, as well as the decision by which the procedure is terminated due to preliminary issues, the market participant may request a review of this decision based on the legislation in force.

2. Against the decision on fine application, within the provided legal deadlines respectively in article 16, point 6, of Law no. 43/2015 "On Power sector", as amended and article 17, point 3, of Law no. 102/2015 "On natural gas sector", as amended, from the publication of the decision, an appeal can be made to the administrative court in the Republic of Albania.

- Article 16, point 4 - For the violations defined in paragraph 3 of this article, fines varying from (500 000 ALL) shall be applied to the natural and legal person up to the legal limit defined in the laws mentioned in point 3 of this article.

- Article 16, point 8 - The fine imposed by ERE board constitutes an executive title and shall be executed in accordance with the Civil Procedure Code.

To accept the proposals of TSO company regarding the changes of the linguistic character of the Regulation in point 4, article 1, point 1 and 2, article 6, article 10, 11 and 17.

To not accept the proposals of TSO company regarding the amendments of the Regulation in point 1.3 (i), 1.6 and 1.11, article 2, point 2, article 7 and article 8.

Article 14, point 1- ERE board decision to open the procedure for imposing a fine and the decision to ascertain and impose a fine, including the deadlines provided for these two decisions, are based on Article 107, of Law no. 43 / 2015 "On Power sector", as amended, article 106, of Law no. 102/2015 "On natural gas sector", as amended, Law no. 10 279, dated 20.05.2010, "On Administrative contraventions", Regulation on procedures for imposing and reducing the fines, approved with ERE board decision no. 125, dated 29.07.2016 and the Regulation on the conditions and procedures of imposing the fines approved with ERE board decision no. 95, dated 04.07.2017.

Article 14, point 2- ERE in special cases as well as provided in articles 91 and 92 of Code of Administrative Procedure may extend the deadline for decision making by 30 days.

Article 14, point 4 - ERE publishes in the Official Gazette, as well as on the official website the approved decisions.

Article 15, point 1 - Against the decision of the ERE, which finds a violation of this Regulation and the application of punitive measures as well as against the decision by which the procedure is terminated due to preliminary issues, the market participant may request a review of this decision based on the legislation in force.

Article 15, point 2 - Against the decision on fine application, within the legal deadlines respectively defined in Article 16, point 6, of Law no. 43/2015 "On Power sector", as amended and article 17, point 3, of Law no. 102/2015 "On natural gas sector", as amended, from the publication of the decision, an appeal can be made in the administrative court of the Republic of Albania.

Article 16, point 5 - In accordance with article 107, point 2 and 3, of Law no. 43/2015 "On Power Sector" as amended, article 106, point 1, letter "ç", of Law no. 102/2015 on "Natural Gas Sector" as amended, article 8, 9, 10, 11, 12 and 13, of the "Regulation on procedures for imposing and reducing the fines" approved with ERE board decision no. 125, dated 29.07.2016 and article 8, 9, 10, 11, 12 and 13, of the "Regulation on the conditions and procedures of imposing the fines" approved with ERE board decision no. 95, dated 04.07.2017, ERE may apply a progressive fine or reduce it for each case.

For all of the above mentioned, ERE Board

Decided:

1. To approve the “Regulation on wholesale energy market integrity and transparency (REMIT).
2. Market Monitorin and Inspections Directory shall inform the interested parties about ERE Board decision.

This decision enters immediately into force.

This decision may be reviewed within 7 calendar days and may be complained on Tirana Administrative Court, within 30 calendar days from the publication in the Official Gazette.

This decision is published in the Official Gazette.

ERE CHAIRMAN

Petrit AHMETI