

[REDACTED]

Von: DOCUMENTS-ACCESS <DOCUMENTS-ACCESS@acer.europa.eu>
Gesendet: Montag, 7. Februar 2022 18:27
An: [REDACTED]
Betreff: Application for access to documents n. 233233
Anlagen: Documents for application n. 233233.zip

[REDACTED]

Germany
By email

Dear Mr [REDACTED]

Subject: Your application for access to documents – Ref No ACER-IN-2021/233233

We refer to your e-mail dated 10 December 2021 in which you make a request for access to documents, registered on 17 December 2021 under the above-mentioned reference number.

Your application to access documentation related to the ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design, and in particular with limitation to market manipulation in the gas market, is reported below:

- 1- request to access the Internal guidelines and rulebooks used by ACER to cooperate with other regulatory authorities to prosecute market manipulation and abuse. If no such documents exist, request to access a list of national regulatory authorities with which ACER has been in contact to investigate the price trends that are the subject of the aforementioned Assessment, as well as the correspondence with these regulatory authorities (separately for electricity and gas);
- 2- request to provide the list of the OMPs referred to in the link <https://acer.europa.eu/remit/coordination-on-cases/coordination-with-relevant-authorities>, as well as all correspondence and contracts relating to this cooperation;
- 3- request to access documentation on the temporary cessation of monitoring activities, including the justification, which ACER sent to the Commission at the time (ACER's website at <https://acer.europa.eu/remit/coordination-on-cases/coordination-with-relevant-authorities> states: 'since 2018, ACER temporarily discontinued its activities related to the creation of (cross-border) investigatory groups because of a shortage of resources').

Your application contained also a request for information, which will be dealt separately.

Your application concerns the following documents:

1. *ACER - Authorised parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017*
2. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016*
3. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021*

4. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019*
5. *ACER - Public - ACER Single Programming Document 2022-2024 - 12.2021*
6. *OMPs and ACER - Public - Memorandum of Understanding on the cooperation for market monitoring under Regulation (EU) No. 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency - 2020-2021*
7. *ACER - List of OMPs who signed the MoU on the cooperation for Market Monitoring*
8. *OMPs correspondence*
9. *ACER - Public - ACER Revised Programming Document 2018-2020 - January 2018 (see page 111)*

Having examined the documents requested under the provisions of Regulation (EC) No 1049/2001 regarding public access to documents, I have come to the conclusion that some of the listed documents cannot be disclosed, as their disclosure is prevented by the exceptions to the right of access laid down in Article 4 of this Regulation.

Access is refused for the following documents:

1. *ACER - Authorised Parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017.* Access to this document is marked as 'Authorised parties only' and it can only be accessed by ACER and the NRAs. The MMH's aim is to ensure coordination and consistency in the investigations of potential REMIT breaches. It identifies the roles of each of the entities with wholesale energy market monitoring responsibilities (ACER, NRAs, PPATs), it provides guidance on case handling processes comprising interactions between those entities and defines the principles for efficient cooperation between ACER and the NRAs on REMIT breach cases.
2. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016.* This document provides the framework on which market surveillance is carried out at EU level. This document is not shared with non-authorised parties, as it contains information of strategic importance for ACER and the NRAs such as challenges in relation to market surveillance and goals to ensure effective surveillance across the EU.
3. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021.* This document details the surveillance coverage across Europe. In other words, this is a “who-does-what” document in relation to surveillance across the EU. This document is marked as 'Confidential' and should not be shared with non-authorised parties as it contains: (i) a surveillance gap analysis (both qualitative and quantitative) and (ii) division of monitoring work between NRAs and the Agency specified on a market level. This information is of strategic importance for ACER and the NRAs and sharing it would jeopardise the effectiveness of market surveillance across the EU.
4. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019.* This document contains the alert screening process at ACER, as well as the logic and parameters of the alerts. This document is marked as 'Confidential' and should not be shared with non-authorised parties. This document is the backbone of ACER's market surveillance and sharing it with external parties would jeopardise ACER's work in detecting and deterring market abuse in the EU wholesale energy markets.
8. *OMPs correspondence.* With regard to the whole cooperation between ACER and OMPs on market monitoring, the request is too vague, as this cooperation is ongoing since several years. In relation to the ACER's Preliminary Assessment of Europe's high energy prices and the current wholesale electricity market design, there was no correspondence exchanged between the Agency and OMPs and the request is devoid of purpose.

Access is refused on the basis of the following legal grounds:

1. *ACER - Authorised Parties only (restricted to ACER and NRAs) - Market Monitoring Handbook (MMH) – 13.12.2017*. Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
2. *ACER - Internal document (the Agency and NRAs use only) - REMIT Market Surveillance Strategy – 14.12.2016*. Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
3. *ACER - Confidential (Authorised Parties only) - REMIT Market Surveillance Strategy - Governance section - 01.06.2021*. Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.
4. *ACER - Confidential (Authorised use only) - Alerts Manual - 16.10.2019*. Access refused in line with Article 4(2) of Regulation 1049/2001 as the disclosure would undermine the effectiveness of inspections and investigations and the overall deterrent effect stemming from the objective and spirit of Regulation (EU) No 1127/2011.

The exceptions laid down in Article 4(2) of Regulation 1049/2001 apply unless there is an overriding public interest in disclosure of the documents.

The Agency believes that there is no overriding public interest that could justify the disclosure of documents 1, 2, 3 and 4. There may exist a public interest in knowing the market surveillance practices of the Agency and their efficiency, but this does not outweigh the harm that such disclosure would cause to the interests protected by the invoked exceptions, and more generally the harm that such disclosure would cause to the integrity of European energy markets and the effectiveness of Regulation (EU) No 1127/2011.

In accordance with Article 7(2) of Regulation 1049/2001, you are entitled to make a confirmatory application requesting the Agency to review this position.

Such a confirmatory application should be addressed within 15 working days upon receipt of this letter to the Director of the Agency at the following address:

Agency for the Cooperation of Energy Regulators
Director
Trg Republike 3
1000 Ljubljana
Slovenia

or by email to: director@acer.europa.eu copying DOCUMENTS-ACCESS@acer.europa.eu

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Yours sincerely,

