

Energy Community Secretariat

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Mr. Andriy Gerus
Chair of the Committee on Energy, Housing and Utilities Services
Verkhovna Rada of Ukraine

Per email: gerus@rada.gov.ua, agerus@gmail.com

Vienna, 16 June 2021

RE: regarding comments to the draft Law on REMIT (reg. No.4503-d)

With this Letter, the Energy Community Secretariat provides feedback on the draft Law No.4503-d (updated version of the draft law No.4503)¹ that primarily aims at transposing Regulation 1227/2011 on wholesale energy market integrity and transparency (hereinafter 'REMIT Regulation') into the legislative framework of Ukraine. We would like to confirm that the draft Law was substantially improved following results of the consultations (for instance, clarification of definitions, exclusion of provisions on self-regulated organizations). At the same time, we would like to warn the Committee on Energy, Housing and Utilities Services about the next:

- excessive degree of details proposed in the draft law No.4503-d could burden the investigation process for the NEURC. Some of the proposed details follow ACER guidelines, which might in future be amended as the market evolves. In any case, those guidelines are taken into account and shall be applied through the ECRB. We do not recommend to include those provisions from the guidelines in the law – those details are more suitable for the secondary or tertiary legal acts (especially, taking into account long time and difficult process of amending primary legislation in Ukraine).
- more importantly: updated version still contains several non-REMIT related provisions. We are concerned that packing other changes to REMIT provisions without a holistic assessment of their impact might have detrimental impact on other segments. In particular: amendments to the law “On Natural monopoly”; amendments to the Law “On Electricity Market” regarding market management system and liquidity on the DAM; amendments to the Law “On Electricity Market” and “On Natural Gas Market” related to the market makers, etc. (please, see details in Annex to this Letter).
- definition of professional secrecy seem to be very wide and may hinder the definition of inside information and therefore its disclosure as required by Law.

Having in mind the above, despite the substantial improvements, we cannot support the Law No.4503-d in the existing version.

Also, we would like to remind that recently we wrote² to the Committee on Energy, Housing and Utilities Services regarding the draft No. 5322, to which we expressed our support, including some

¹ The comparison table received by e-mail on 04.06.2021, updated version registered on 08.06.2021 (https://w1.c1.rada.gov.ua/pls/zweb2/webproc4_1?pf3511=72171)

² EnCS Lettes of 04 April 2021, UA-PARL/O/jk/05/04-04-2021

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remarks that would improve the Law. We believe that with the adoption of the draft Law No.5322, the Parliament of Ukraine will transpose REMIT Regulation into Ukrainian legislation and enable efficient implementation to comply with the Energy Community requirements.

Having acceded to the Treaty Establishing the Energy Community, Ukraine undertook the obligation to implement the European legislation into the Ukrainian legislation within the timeframes specified for the Energy Community Contracting Parties. The REMIT Regulation became part of the EnC acquis by Decision of the Energy Community Ministerial Council 2018/10/MC-EnC, setting a transposition deadline of 29 November 2019 and deadline for implementation by 29 May 2020.

Considering the fact that Ukraine, despite several drafts discussed, has not yet transposed the requirements of the REMIT Regulation into the current Ukrainian legislation, the Energy Community Secretariat initiated the an ex officio dispute settlement procedure against Ukraine (ECS 04/21).³ Drafting and adoption of primary legislation is only part of the process of transposition, the Case could be closed after the transposition and implementation of the REMIT Regulation as it adopted and adapted by decision of the Energy Community Ministerial Council 2018/10/MC-EnC.⁴ The Energy Community Secretariat carries out continuous monitoring of the transposition and implementation of obligations by the Energy Community Contracting Parties.

We remain at your disposal for any further discussions and clarifications.

Best regards



Sincerely Yours,

Janez Kopač

Director

Energy Community Secretariat

- Annex on 97 pages.

³ <https://www.energy-community.org/legal/cases/2021/case0421UE.html>

⁴ https://www.energy-community.org/dam/jcr:aec217c0-51fa-426a-a986-f36455546f51/Decision_2018_10_MC-EnC_Reg_1227-2011_112018.pdf