*Responses to the comments of the parties on the document* ***Rule on Electricity Market Integrity and Transparency***

The Law on the Energy Regulator is partially in line with Directive 2009/72/EC, regarding common rules for the internal electricity market, and Regulation No. 714/2009/EC, on the criteria for access to the network for cross-border services of electricity. It is requested from the Ministerial Council of the Energy Community Secretariat (ECS) the transposition/adoption of the REMIT rule by the ECS Contracting Parties which provides for the implementation of a light form of the REMIT rule.

The REMIT rule was adopted in 2011 in the EU, while since 2018, ECS has started the preparation of REMIT for the Contracting Parties where a basic template for the rule has been prepared. Many meetings (workshops) have been held to clarify the preparation of the rule and its implementation by the Contracting Parties. ERO has prepared the adapted version according to the ECS format for the Contracting Parties, taking into account the national legislation.

The rule sets out criteria that prohibit abusive practices affecting wholesale energy markets. The rule describes: the prohibition of trade and the obligation to publish data; monitoring and registration of market participants, confidential information; supervision, investigation and administrative measures.

In order to enable transparency for the adoption of the rule, ERO has published the draft rule for public consultation for the responsible parties and the broad public for a period of two weeks. During the public consultation period, ERO has received comments from INDEP, KOSTT and ECS, which are summarized in this document along with ERO's responses.

ERO thanks all the parties for their comments, which have contributed to improving the quality and content of the document. All comments have been analyzed and considered, but given the specifics of the document, a significant portion of the comments have been included in the document, while the rest have been clarified or deemed inappropriate to be included on it.

**INDEP’s comments and ERO’s responses**

**General Comments**

In an increasingly open energy market, the Rule on Wholesale Energy Market Integrity and Transparency is an important document for ensuring the free competition in the market and the prevention of manipulative practices. If the language is modified and greater precision and simplification is provided, the Rule has the potential to be a fruitful and complementary document to the current legal basis.

The draft Rule is written in an incomprehensible language, with repetitive and unnecessary elements and formulations that create confusion and leave room for interpretation. Certain articles of this Regulation may be interpreted not to protect the transparency and integrity of the market but, on the contrary, to conceal information which may be in the public interest.

ERO’s Response

The request of ECS was that the document must be approved as soon as possible, so ERO in order not to waste time has published the draft document not formatted in technical and linguistic terms, while the final version is corrected and improved and we consider that such flaws have been eliminated. The improvements made have also been harmonized with the Energy Community Secretariat (ECS), and the document has taken its final form in accordance with the criteria and template of the document sent by the ECS to the Contracting Parties.

**Initially, Article 1 - Purpose and Scope, paragraph 5 states:**

ERO and, where appropriate, national competition authorities and other relevant national authorities cooperate to ensure that a coordinated approach is taken to the implementation of this rule, where actions are linked to one or more wholesale energy products, to which Articles 3, 4 and 5 of this Rule apply.

We propose to remove the expression "where appropriate." The cooperation of ERO with the Competition Authority is mandatory based on Law no. 03 / L-229 on Protection of Competition:

At the request of the Authority, according to Article 38 of this law, all public administration bodies and local bodies, as well as legal entities, are obliged to submit to the Authority all the required information, documentation, including data and documents containing business secrets, while the Authority with such data and documents is obliged to act in accordance with the provisions of Article 50 of this law.

In addition to this, the expression "where appropriate" is not an appropriate legislative language as it creates dilemmas as to who and when is deemed appropriate and when not. Therefore, we request that this expression be removed completely from this article or even the entire paragraph as cooperation is implied and mandatory by law.

ERO’s Response:

ERO has analyzed the comment in question and consulted the REMIT versions submitted by ECS and the EU REMIT version and this form is used in both versions. Of course, it was thought that other authorities could not be implicated in all issues, but when the issues are more sensitive, then cooperation will take place.

The cooperation of ERO with the Competition Authority is mandatory according to the legislation in force, and will be fully implemented by ERO. REMIT is a highly professional document which is exclusively dedicated to the monitoring of the wholesale energy market and falls under the responsibility of regulators, including the request for cooperation with national competition authorities, therefore this paragraph does not violate in any way the cooperation and responsibilities of the parties and as such should remain in the Kosovo’s document. Furthermore, paragraph 4 of this article states: ***This Rule is without prejudice to the application of Energy Community legislation and national legislation on completition to the practices contained in this Rule.***

Of course, the Kosovo Competition Authority has the opportunity at any time to initiate monitoring together with ERO or even independently.

**In Article 2 –Regarding Definitions and Interpretations we have the following findings:**

Unnecessary definitions:

1.2. Document

1.11. Energy Sector

1.12. Wholesale Energy Market

1.13. Market Participant

1.14. Person

1.15. Energy Regulatory Office (ERO)

1.16. Public Authority

1.17. Transmission System Operator

1.18. Enterprise

All these definitions for the energy sector are general knowledge and the definition for them is unnecessary and only burdens the document. Moreover, these definitions exist in other respective laws and the Rule does not need to contain them.

Also, 1.20 The Natural Gas Transmission System Operator does not exist in Kosovo and as such this definition should be removed.

ERO’s Response

Given that the document is specific and is not foreseen by national legislation, then ERO considers that definitions and interpretations should be part of this document, but to be clearer in some cases the definitions have been improved and adjusted.

The rule also applies to natural gas and therefore the definition of *Natural Gas Transmission System Operator* should remain the same as in the EU REMIT and the Contracting Parties.

**In Article 3- Prohibition of Insider Trading**

We request the removal of paragraph 1 which states:

Anyone who in contradiction to his duties to protect the inside information which he learns during the performance of economic activity or ex officio, communicates to the unauthorized person the information unknown to the public and which may affect the wholesale energy product or anyone who otherwise uses such information for personal gain or for the purpose of unfair advantage in the wholesale energy market for any natural or legal person is prohibited under this Rule and the applicable penal legislation.

This definition is not found in the Regulation 1227/2011 of the European Union and as such creates ambiguity. The paragraph deals with the obligation to silence internal information whereas it is placed within the Article which exclusively regulates the prohibition of insider trading. It is also ambigious because it does not define what is meant by an unauthorized person to whom information is not allowed. Due to this, we request that this paragraph be removed from the text of the article.

ERO’s Response:

Almost all the restrictive provisions of this paragraph are scattered in the other paragraphs of this article, therefore the paragraph has been removed altogether and the comment has been taken into consideration.

**In Article 6- Market Monitoring**

Article 6, paragraph 3 states:

The Contracting Parties may provide their national competition authorities or a market monitoring body established within that authority to conduct market monitoring with ERO. In conducting such market monitoring, the national competition authority or market monitoring body shall have the same rights and obligations as ERO.

This definition is given in Regulation 1227/2011 of the European Union and is given as an instruction to the states (contracting parties) so that they consider providing the possibility for certain competition protection bodies to carry out monitoring activities within the framework of the regulatory body. (in this case ERO). This does not mean that it should be included in our Rule and we request that it be removed as it is not clear who the contracting parties are and who can make such a decision.

ERO’s Response:

ERO has consulted the ECS version of REMIT and that of the EU and the provision of the paragraph is in all versions. The paragraph has been adapted by changing the approach from the perspective of ECS to the contracting parties to that of ERO for local parties, and has been reworded as follows.

 *“Regarding the wholesale energy market monitoring, ERO should cooperate with the Kosovo Competition Authority, or any other market monitoring body. In conducting such market monitoring, the Kosovo Competition Authority or market monitoring body shall have the same rights and obligations as ERO pursuant to the first part of this paragraph, the second sentence of Article 4, paragraph 2 and Article 13. ERO, no later than June 30 of each year, must send to the Secretariat a report on the activities of the previous year under this Rule, and also this report must be published on the website of ERO."*

**In Article 7 – Registration of Market Participants**

Article 7, paragraph 1 states:

Market participants who enter into transactions with wholesale energy products or express interest in entering into such transactions through trading procedures must register with ERO, where the delivery of wholesale energy products takes place. For registration purposes, ERO will apply the registration format developed by the Agency for Cooperation of European Regulators (ACER) according to this rule. The regulator will publish the registration format on the website.

We propose that the phrase "where wholesale products are delivered" shall be removed because as such it is unclear what it is about. According to this definition, wholesale energy products are delivered to ERO!

In relation to Article 7, we also propose that in paragraph 3 a last sentence should be added with the following content: *"The register of market participants shall be public and shall be updated on a regular basis."* This definition increases market transparency and is positive given the fact that it increases transparency and credibility in the process.

ERO’s Response

Paragraph 1, as well as other paragraphs of this article have been modified and adapted to eliminate ambiguities, and the part for publishing the register of market participants has also been added. Only one common REMIT regulation has been developed for all EU Member states, and ACER maintains the registers of all countries and publishes them. For ECS Contracting Parties the situation is different and each country will prepare the REMIT rule by adapting it to local legislation, and the maintenance and publication of the registers is carried out by each country. Therefore, ERO has adapted the document, including the request for publication of the register of market participants as mentioned above.

**Article 8 – Data Protection**

The provision that this Rule does not prejudice the obligations of ERO and market participants from the implementation of legislation in the area of personal data protection is completely unnecessary. As Kosovo is not a member of the European Union, of course the EU Regulation does not have direct application on the national legislation. Therefore, it is understandable that in the hierarchy of norms, Law No. 03 / L-172 on Personal Data Protection stands above any Rule and consequently, Article 8 is unnecessary.

ERO’s Response:

The Article has been reformulated and is intended for reference only in national legislation.

**Articles 10 and 11 - Articles are missing or their order is wrong**

There are language errors throughout the text of the Rule. The document has been translated by the EU Regulation and contains expressions which should have been adapted and not literally translated. For example, Article 13, paragraph 2, states:

ERO and the national competition authority in a Contracting Party may establish appropriate forms of cooperation to ensure effective and efficient investigations and to contribute to a coherent and consistent approach to investigations, court proceedings and the implementation of this Regulation and the relevant financial and competition law.

The expression "in a contracting party" is a text taken from the Decision of the Council of Ministers of the Energy Community 2018/01 / MC-EnC2 but which has been marked that it should be linguistically adapted and not put as such. In its current form, this expression "contracting party" is in 8 different places in the document that distorts the meaning of the articles because it has not been properly adopted. If these adjustments are not made, then a significant portion of the articles lose the proper meaning they should have.

ERO’s Response:

The order of articles has been ameded in the enitre document.

The term ***contracting party*** is corrected throughout the document, except when referring to the ECS Contracting Parties.

**Article 15- Enforcement of Prohibitions on Market Abuse**

We propose that Article 15 be deleted from the Rule. This provision is not contained in the adopted EU Regulation. Most importantly, we consider that Article 15 exceeds the competencies of ERO and as such should be removed from the Rule. Investigative measures against market abuse are carried out under the framework of Law 03 / L-229 on Protection of Competition and by the Competition Authority. Investigations into market abuse are not within the competence of ERO. ERO can and should support the work of other bodies in this regard, but never take a leading and proactive role in conducting investigations into market abuse when there are specialized bodies for this.

ERO’s Response:

This article is one of the main obligations assigned to ERO to monitor the abuse of the wholesale energy market and is included in EU Regulation 1227/2011 on REMIT, as well as in the REMIT sample for contracting parties.

In accordance with the primary legislation of the energy sector, ERO has been given such competence, especially the Law on Energy Regulator which contains many provisions related to the monitoring of the wholesale energy market, with emphasis on the prohibition of abuse.

More specifically, this issue is also addressed in:

**Article 15 – Duties and Responsibilities of the Regulator:**

Paragraph 1 - For the fulfillment of its duties, the Regulator has the following authority and responsibilities:

…

1.6 monitor and prevent the misuse of dominant positions and non-competitive practices by energy enterprises and take respective measures in accordance with this law and other relevant laws;

...

**Article 16- Market Monitoring and Competition Incentive Measures**

**Paragraph 1** –The Regulator is responsible for monitoring the operation of electricity, thermal energy and natural gas markets, in order to ensure the efficient operation of these markets, as well as to identify corrective actions that may be required. This includes the monitoring of:

...

1.9. the level and effectiveness of market opening and competition at the wholesale and retail level, including electricity prices, prices for household customers including prepayment systems, supplier switching tariffs, disconnection tariffs, maintenance services payments, and complaints from household customers, as well as any competition irregularities or restrictions, including the provision of relevant data and the submission of relevant cases to the Kosovo Competition Authority;

...

**Paragraph 3** (of the same Article) **-** The Regulator shall undertake such measures that are considered necessary for:

...

3.2.; preventing the abuse of dominant position or for the conclusion, or attempt to conclude an agreement of a licensee which has the purpose or effect of restricting or distorting competition;

...

**Article 19 –Mitigating factors when imposing administrative measures and fines**

We consider that this provision is also unnecessary and we propose to remove it completely because the mitigating and aggravating factors of imposing fines are already defined by Law no. 05 / L-087 on Minor Offenses and in all circumstances, the Law shall take precedence over the principles set forth in this Rule. The second reason why we consider that this Article should be removed is due to the way it is formulated. As mitigating factors are foreseen:

1.1. The natural or legal person has tried to prevent or reduce the damage caused by the violation;

1.2. The degree of damage caused to the natural or legal entity;

1.3. Previous behaviours;

1.4. Financial situation etc.

It is extremely subjective to set these criteria as preconceived notions or degree of damage or financial condition. There is no objective basis for their measurement and any assessment will be entirely subjective. Also, the provision ends with “etc.”, which is not a normative practice and infinitely increases the subjectivity of the assessment. For these reasons, we consider that this article should be removed.

ERO’s Response:

Article 19 - *Mitigating factors when imposing administrative measures and fines* has been removed from the document, as mitigating and aggravating measures are set out in other legislation including the Rule on Administrative Measures and Fines.

**Conclusion**

The Rule on Integrity and Transparency of the Wholesale Energy Market transposes the EU Regulation, 1227/2011 of 25 October 2011 adopted by the decision of the Council of Ministers of the Energy Community Treaty no. 2018/01 / MC-EnC of 2018. As such, it is important for completing a mandatory legal basis in the implementation of European legislation.

The rule is drafted in an incomprehensible language and is sometimes seen as an almost literal translation of EU Regulation 1227/2011. For this, a reading and adaptation of the provisions to the reality and the legal order in Kosovo is needed. Expressions such as "Contracting Parties" or "other authorities", etc., should be replaced because they are inserted by inertia as if they were designed for 28 EU countries. In addition, there are numerous language problems and provisions that make much more sense in English than in the proposed draft.

Starting from the definitions and interpretations, we have seen that the document is overloaded with elements that are either general knowledge or regulated by other laws and are unnecessary to introduce. To this end, we have proposed a number of reductions in the text which would simplify the Rule and make it more understandable. Similarly, were the articles dealing with the protection of personal data and market distortions that are already regulated by legal acts.

We have assessed that the Register of Market Participants should be public and the transparency of data should also be defined in this rule. Also, as the Rule obliges ERO to conduct investigations into allegations of market abuse in a direct manner, we have considered that ERO should assist and coordinate activities with the Competition Authority but not take on a proactive role. Finally, we have also seen provisions relating to the criteria for mitigating fines that have been unnecessary, unclear and undefined.

Finally, we request from the Energy Regulatory Office to consider our observations so that when adopted, this important document will serve the common objective of a functioning, transparent and integrated energy market.

ERO’s Response:

The REMIT Rule was drafted by the EU, and adapted for the ECS Contracting Parties in order to be transposed by the National Regulatory Authorities of the Contracting Parties. Since the Rule deals with issues related to electricity and natural gas, then this rule is attributed to regulators for transposition, but also for its implementation. Of course, close co-operation with the Competition Authority and other relevant authorities is required, as well as with the Energy Community Regulatory Board.

Even before the transposition of this rule, national energy legislation, as well as that of other contracting parties to the ECS, had a broad content of provisions that included monitoring of wholesale energy trade by promoting transparency, non-discrimination and elimination of abuse and violation through the use of the information they own. However, the Energy Community and ECS, to reinforce this monitoring, have also developed the Rule on Wholesale Energy Market Integrity and Transparency, which should be transposed and implemented by National Regulators.

ERO is among the first countries from the Contracting Parties to respond to the request for transposition and implementation of the REMIT Rule, and will try to implement it as transparently as possible, relying on the support of the Kosovo Competition Authority and other relevant authorities.

ERO thanks INDEP for their comments on the Rule on Wholesale Energy Market Integrity and Transparency.

**KOSTT’s Comments and ERO’s Responses**

**Article 2- Definitions and Interpretations**

paragraph 1.8 - Does it also mean the plural - customers,

ERO’s Response:

In this case it is about a customer who may have several metering points, i.e the sum of all supply points of that customer. In the final version the paragraph is adapted to present this definition more clearly.

paragraph 1.10 - The energy sector is not an activity but a branch of the economy whose activity includes,

ERO’s Response:

*The description of the definition is adapted to "Energy sector - economic branch with activities which include production, ..."*

In the final version of the document, the reference to paragraph 1.10 was changed to 1.9, and the number of articles and paragraphs in the entire document was changed.

paragraph 1.11 - if Memeber States has been replaced by “Contracting Party” then it should be explained that this also includes member States,

ERO’s Response:

The description of the definition is adapted to "**Wholesale energy market”** - means the market within Kosovo ..."

paragraph 1.26 - There is a need to suggest the definition the contracting parties are the EU Member States and the signatory states that are not EU members.

ERO’s Response:

The definition of **Contracting Parties** remains the same and applies only to the Contracting Parties to the ECS under the Energy Community Treaty.

**Article 3– Prohibition of Insider Trading**

from the paragraphs of this article it is understood that the article is not about the prohibition of trading but more about the disclosure of market information

ERO’s Response:

Paragraph 1 of Article 3 has been removed, while the rest of the article remains.

Article 3 contains provisions relating to the prohibition of insiders possessing information, to use that information themselves or to give it to other parties to use it for wholesale energy trading.

**Article 4 Obligation to publish inside information**

paragraph 5 - what does it mean *is not obliged to publish*

 ERO’s Response:

The paragraph has been completely removed because it refers to EU Member States and has even been removed from the final version of the ECS sample.

**Article 6- Market Monitoring**

paragraph 1 – it must be defined what is inside information otherwise the paragraph does not make sense. The parties cannot trade without inside information.

ERO’s Response

In Article 2 - Definitions and Interpretations, the definition **Inside Information** exists and the paragraph remains as it is.

By definition *Inside information* means information that is not public and can significantly affect the prices of wholesale energy products. It is usually about people who are not responsible for wholesale energy trading and who can use this information for their own benefit or that of third parties. Alternatively the people responsible for trading may use the information from their enterprise for trading of the enterprise in question.

**Article 7- Registration of Market Participants**

paragraph 1- does this mean that the license is not required?

ERO’s Response

If the law on electricity is interpreted then traders and suppliers registered in another Party of the Energy Community have the right to participate in the electricity market, according to the principle of reciprocity, without having to be licensed in Kosovo (see the following article of LEE).

***Article 32 – Electricity Trading***

*3. The licenses issued for the trading of electricity in other Contracting Parties of the Energy Community shall be recognized in Kosovo. Such licensed suppliers will have the right to trade electricity without the need for an additional license. Traders and suppliers registered in another Party of the Energy Community have the right to participate in the electricity market, in accordance with the principle of reciprocity and in accordance with applicable market rules, balancing rules and fiscal rules.*

**Article 9- Operational Reliability**

The title - the article is more about information protection - I do not understand why the article is titled Operational Reliability.

ERO’s Response:

In order to achieve operational reliability, there must be information protection, and since the same term for this article has been used in all versions of the ECS and EU REMIT, we consider it best to remain as it is in the document.

**ECS’s Comments and ERO’s Responses**

ECS comments are in English, whereas ERO has translated them, sometimes adapting them to Albanian.

**Article 2 –Definitions and Interpretations**

Paragraph 1.2 – *Document*- What is a designated document and who designates it?

ERO’s Response:

The definition ***document*** is implicit and in the final version of the REMIT rule is deleted.

 Responsens and Interpretationsity d?ticipants

Paragraph 1.7.1 Contracting Parties of the Energy Community - Have been defined below and are for the whole document?

ERO’s Response:

The term ***Contracting Party*** has been amended throughout the document, except in the case with the real meaning of ECS Contracting Parties.

Paragraph 1.8 – Reference- Rather 1.10?

ERO’s Response: ragraph does not make sense. t

The above reference has been changed, and the numbering of some articles and paragraphs has been rectified, and rephrased throughout the document.

Paragraph 1.17 This and terms below on undertakings, distribution etc. are defined in primary legislation so you can decide also to make a reference that terms defined in primary legislation are to have the same meaning here.

ERO’s Response:

ERO considers that references to terms that are defined in the primary legislation may be used, but defining them in the document will only improve it and make interpretation easier.

**Article 3 - Prohibition of Insider Trading**

Paragraph 1 - presume it is a translation issue, but inside information is the appropriate term.

Definition of inside information refers to these elements.

ERO’s Response:

In the final version, this paragraph has been completely deleted as unnecessary, because the restrictive provisions of this Paragraph are distributed in other paragraphs and subparagraphs of this Article, furthermore the term inside information has been mistranslated from Albanian to English.

Paragraph 6.1- Not sure what the meaning of this is? We tried to add something the way we understood it, since a person…

ERO’s Response:

The paragraph is the same in the ECS template, but the added text (in relation to wholesale market) can be considered in the final version, but we consider it is understandable.

**Article 4 - Obligation to publish inside information**

Paragraph 5 - There shall be reference to national legislation not EU regulations that have even been adapted for EnC and transposed in Kosovo.

ERO’s Response:

Paragraph has been entirely deleted, as it relates to EU Member States.

Paragraph 6 - same comment as above – references to national law and secondary legislation adopted under those laws – not reference to EU Directives and EU codes and guidelines.

ERO’s Response:

References to EU Directives and Regulations have been removed, and references have been adapted to local energy sector laws.

**Article 6- Market Monitoring**

Paragraph 3 - This should be rephrased – if Kosovo decides it should grant here or elsewhere that right to NCA. This is copy/paste from the Regulation.

Paragraph 4 - Decide here how often and timing – when in the year etc. This is the rule transposing the regulation.

Paragraph 5 - This is not for Kosovo to transpose but for ECS institutions

ERO’s Response:

Paragraphs of this Article have been adapted or reformulated, including the cooperation, competencies and rights of the Kosovo Competition Authority.

**Article 7 - Registration of Market Participants**

Paragraph 3- According to the Decision of the Minestral Council, a deadline of 6 months is required, following the transposition of REMIT.

Recommend to make it shorter, i.e. 3 months. The format is very simple and it is not a big number of participants in Kosovo.

ERO’s Response:

The deadline is 6 months because these are new and unknown issues for the Regulator, and it is also good to consider the situation created by the COVID 19 pandemic, the reduced active staff in energy companies and ERO itself.

Paragraph 4 - Not for Kosovo to transpose. This is for EnC institutions

ERO’s Response:

Paragraph is reformulated.

**Article 8 - Data Protection**

This shall be for Kosovo’s institutions – not copy/paste of Regulation

ERO’s Response:

The expression *Contracting Party* has been removed and the reference to local legislation has been adapted.

**Article 9 – Operational Reliability**

We believe it is about data that must be collected for monitoring, hence the reference on Article 6, therefore preserving the confidentiality of the collected data.

REMIT light does not require data collection as EU REMIT, but ERO may collect on ad-hoc or regular basis certain data.

ERO’s Response:

Since the REMIT template of ECS has the same content and refers to Articles 4 and 6, ERO considers it should remain as it is.

Whereas, regarding the part for data collection, we agree with the ECS statement.

**Article 11 - Cooperation at Energy Community and National Level**

*Textual corrections within by ECS*

ERO’s Response:

A considerable part of the paragraphs of this Article have been reformulated taking into account the corrections and the ECS template.

Paragraph 10 - Just so that ERO is not confused. These are the procedures on which ECRB REMIT WG is working.

ERO’s Response:

The text of Paragraph has been rephrased so that it is more understandable and clear.

**Article 12 - Professional Secrecy**

*Textual corrections within by ECS*

ERO’s Response:

Sub-paragraphs relating to ECS have been deleted; other sub-paragraphs have been rephrased and adapted.

**Article 13 - Enforcement of Prohibitions on Market Abuse**

There must be an explicit reference to the prohibitions and requirements under this Rule.

ERO’s Response:

Paragraph has been added with reference to Articles 3 and 5, and the obligation set out in Article 4, also some paragraphs have been reformulated.

**Article 15 - The right to appeal**

*The competent court -* Which is?

ERO’s Response:

In Kosovo's legislation, depending on the nature of the violation, it is understandable which court is competent.

ERO thanks all parties for the comments and clarifications provided during the drafting of this document.