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REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT AND THE COUNCIL

on the effectiveness of introducing criminal penalties by Member States for intentional and serious cases of market abuse on the Union wholesale energy markets

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I. Introduction: REMIT breaches

Regulation (EU) No 1227/2011 on wholesale energy market integrity and transparency ('REMIT')[1] was amended by Regulation (EU) 2024/1106 ('REMIT II')[2], which entered into force on 7 May 2024 (REMIT as amended by REMIT II is referred to as 'amended REMIT' for the purpose of this report).

REMIT is a key piece of EU legislation. It aims to ensure the integrity and transparency of wholesale energy markets by introducing a framework for the prevention and detection of market abuse.

Article 21a(2) of the amended REMIT requires the following:

"2. By 1 June 2025 the Commission shall assess the effectiveness of introducing criminal penalties by Member States for intentional and serious cases of market abuse on the Union wholesale energy markets and shall submit a report to the European Parliament and to the Council. The report may propose appropriate measures that may include the submission of a legislative proposal."

This report (the 'report') aims to address the European Commission's obligation as per Article 21a(2) of the amended REMIT. Section I of the report contains background information on the amended REMIT and the relevant obligations introduced by REMIT II on Member States as regards enforcement in the event of REMIT breaches. Section II explains the methodology used by the Commission to compile this report. Section III describes the legal framework within which the Union has competences in the approximation of criminal laws and regulations of the Member States. Section IV provides an overview of the measures Member States have put in place to take enforcement actions against REMIT breaches and of the REMIT enforcement landscape across the EU in general. Finally, Section V concludes with the Commission's findings. The report is submitted to the European Parliament and to the Council.

By way of background, Article 18 of REMIT, in its original formulation, obliged Member States to lay down the rules on penalties applicable to REMIT breaches, and take all measures necessary to ensure that they are implemented. The provision also provided that those penalties should be designed to be effective, dissuasive and proportionate, reflecting the nature, duration

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[1] Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, OJ L 326, 8.12.2011, ELI: http://data.europa.eu/eli/reg/2011/1227/oj.

[2] Regulation (EU) 2024/1106 of the European Parliament and of the Council of 11 April 2024 amending Regulations (EU) No 1227/2011 and (EU) 2019/942 as regards improving the Union's protection against market manipulation on the wholesale energy market, OJ L, 2024/1106, 17.4.2024, ELI: http://data.europa.eu/eli/reg/2024/1106/oj.

and seriousness of the infringement, the damage caused to consumers and the potential gains from trading on the basis of inside information and market manipulation. Article 18 of REMIT did not set out a specific penalties framework for the Member States.

During the 2023–2024 revision of REMIT, it was observed that enforcement of the REMIT rules varied significantly across EU jurisdictions. Some Member States reported unusually low enforcement activity. In others, fines for violations were insufficient as a deterrent against future breaches.

REMIT II introduced several significant amendments to address these inconsistencies, ensure effective enforcement against REMIT breaches and therefore further strengthen market integrity.

More specifically, REMIT II reflected the imperative need to set out a more uniform and stronger framework to prevent market manipulation in wholesale energy markets. To that end, REMIT was amended to provide for a specific list of measures that should be available to national regulatory authorities ('NRAs') when enforcing REMIT breaches. In particular, REMIT II stressed the importance for NRAs to be equipped with the necessary investigatory and enforcement powers, already set out in Article 13(2) of REMIT, namely the powers to (a) access any relevant document in any form, and to receive a copy of it; (b) demand information from any relevant person, including those who are successively involved in the transmission of orders or conduct of the operations concerned, as well as their principals, and, if necessary, the right to summon and hear any such person or principal; (c) carry out on-site inspections; (d) require existing telephone and existing data traffic records; (e) require the cessation of any practice that is contrary to REMIT or any delegated or implementing acts adopted on that basis; (f) request a court to freeze or sequester assets; and (g) request a court or any competent authority to impose a temporary prohibition of professional activity.

In addition, the new Article 18(3) of REMIT II introduced obligations on Member States to ensure that NRAs have the power to impose at least the following administrative fines and other administrative measures with regard to REMIT breaches: (a) require the breach to be brought to an end; (b) order the disgorgement of the profits gained or losses avoided due to the breaches insofar as they can be determined; (c) issue public warnings or notices; (d) impose periodic penalty payments; and (e) impose administrative fines.

The new Article 18(4) of REMIT II introduced a framework for the minimum harmonisation of administrative fines, which determines how maximum administrative fines should be established at national level [3]. These amendments aimed to ensure that each Member State imposes fines that are effective, dissuasive and proportionate.

In more detail, the new Article 18(4) and (5) of REMIT II introduces a minimum harmonisation framework, according to which Member States must set maximum administrative fines that are at least as high as the amounts specified in the Article. This harmonisation applies to breaches of the following Articles of the amended REMIT:

- Article 3, which prohibits insider trading;
- Article 4, which provides for an obligation on market participants to publish inside information;
- Article 5, which prohibits market manipulation;
- Article 8, which obliges market participants to report to the European Union Agency for the Cooperation of Energy Regulators ('ACER') data linked to wholesale energy products[4] as well as fundamental data[5] and data linked to market participants' exposures. Details regarding the reporting obligation of market participants are set out in Commission Implementing Regulation (EU) 2026/256[6];
- Article 9, which imposes an obligation on market participants to register with the NRA in the Member State in which they are established or resident. Article 9 also introduced an obligation on market participants established or resident in a third country entering into transactions that are required to be reported to ACER pursuant to Article 8(1) of the amended REMIT to designate a representative in the EU. Article 15, which provides for notification obligations on persons professionally arranging or executing transactions in wholesale energy products, as introduced in REMIT II. Those notification obligations relate to certain REMIT breaches and are addressed to ACER and the relevant NRAs.

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[3] In particular, the actual amount of administrative fines to be imposed in a specific case may reach the maximum level provided for in REMIT II, or the higher level provided for in national law.

[4] 'Wholesale energy products' are defined in Article 2(4) of REMIT.

[5] 'Fundamental data' are defined in Article 2(1) of Commission Implementing Regulation (EU) No 1348/2014.

[6] Commission Implementing Regulation (EU) 2026/256 of 30 January 2026 on data reporting implementing Article 7c(2), Article 8(1a), Article 8(2) and Article 8(6) of Regulation (EU) No 1227/2011 of the European Parliament and of the Council on wholesale energy market integrity and transparency and repealing Commission Implementing Regulation (EU) No 1348/2014, OJ L, 2026/256, 9.4.2026, ELI: http://data.europa.eu/eli/reg_impl/2026/256/oj.

REMIT II provides Member States with tools for more effective enforcement in the event of REMIT breaches. The fact that REMIT II introduced a reinforced framework of administrative fines and other administrative measures does not prevent Member States from introducing criminal penalties for REMIT breaches.

II. Methodology

In order to fulfil its obligation under Article 21a(2) of the amended REMIT and gain an understanding of the effectiveness of penalties for REMIT breaches as currently applicable in the Member States, the Commission prepared a questionnaire addressed to the NRAs, which was disseminated through the Council of European Energy Regulators ('CEER') in September 2024.

That questionnaire, which only focused on the implementation of the REMIT legislation, included questions on the existing national frameworks, in particular as regards administrative fines and other administrative measures; the number of ongoing and past infringement cases per Member State (including the adoption of any final decisions and court judgments) and the relevant penalties imposed; accompanying statistics reflecting the enforcement actions taken in each Member State; and an overview of successful and unsuccessful challenges brought before the competent national courts. The questionnaire included an additional set of questions addressed to Member States, whose penalty framework for REMIT breaches not only provides for administrative penalties and other administrative measures, but also for criminal penalties and other crminal justice measures.

The Commission received 26 responses from NRAs (the 'respondents') in 26 Member States, 21 of which were received in November 2024 and the remaining 5 at the end of June 2025. One NRA did not respond to the questionnaire. This report, therefore, relies on the information submitted by 26 NRAs.

III. EU framework on criminal offences and penalties

This section sets the background to the EU competence to legislate in the field of substantive criminal law, which is governed by Article 83 of the Treaty on the Functioning of the European Union ('TFEU').

In accordance with Article 21a(2) of the amended REMIT, the Commission may submit a legislative proposal should it consider it necessary for Member States to introduce criminal penalties for REMIT breaches.

In accordance with Article 83(1) TFEU, the Union may establish minimum rules concerning the definition of criminal offences and penalties in certain areas of particularly serious crime with a cross-border dimension. These areas of crime, which are exhaustively listed in the TFEU, are the following: terrorism, trafficking in human beings, sexual exploitation of women and children, illicit drug and arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime ('EU crimes'). The Council may unanimously extend this list to cover other crime areas that meet the criteria of seriousness and cross-border relevance, subject to the consent of the European Parliament.

To date, this has been done once, by means of Council Decision (EU) No 2022/2332[7], which added the violation of Union restrictive measures to the list of EU crimes.

In accordance with Article 83(2) TFEU, the Union may also adopt minimum rules to define criminal offences and penalties in areas that have been subject to harmonisation measures under other Union policies. This competence in principle encompasses a wide-ranging and diverse set of policy areas. However, it can be exercised only where criminal enforcement **proves essential** to ensure the effective enforcement of the Union policy concerned – this is notably the case for serious cases of market abuse in financial services[8].

IV. State of play on REMIT breaches and main lessons learned

Administrative and criminal penalties currently applicable in EU Member States

Based on the information submitted to the Commission, some Member States apply only administrative measures to ensure enforcement in the event of REMIT breaches, while others

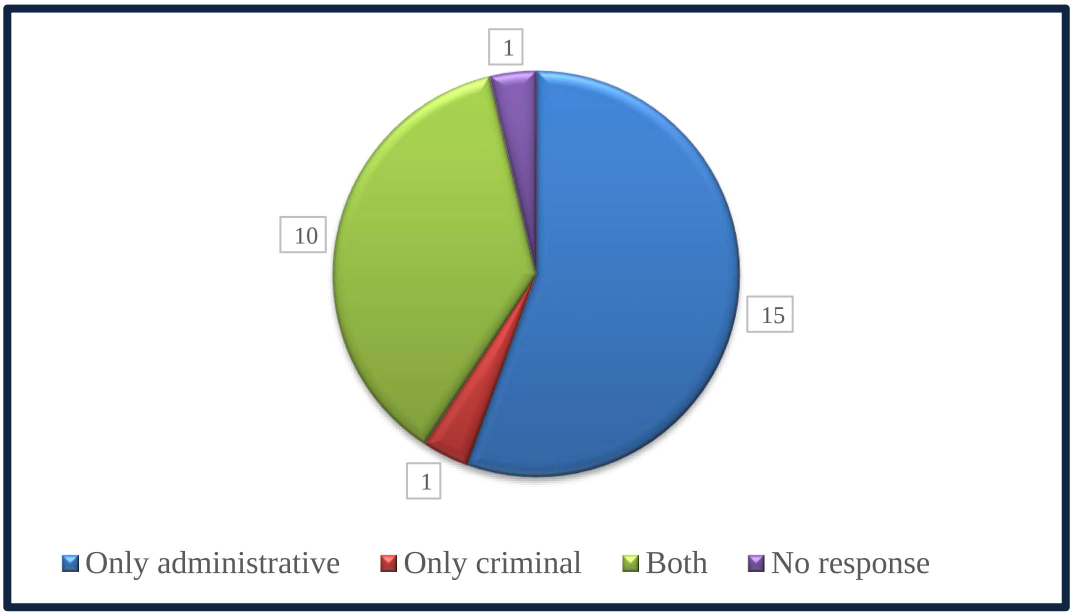
[7] Council Decision (EU) No 2022/2332 of 28 November 2022 on identifying the violation of Union restrictive measures as an area of crime that meets the criteria specified in Article 83(1) of the Treaty on the Functioning of the European Union, OJ L 308, ELI: http://data.europa.eu/eli/dec/2022/2332/oj.

[8] For instance, in relation to Directive 2014/57/EU on market abuse, Directive (EU) No 2017/1371 on the fight against fraud to the Union's financial interests and Directive (EU) No 2024/1203 on the protection of the environment through criminal law, OJ L 173, 12.6.2014, ELI: http://data.europa.eu/eli/dir/2014/57/oj.

also provide for criminal penalties, in addition to administrative measures. One Member State has a framework consisting exclusively of criminal penalties.

The figure below shows the number of Member States applying: (i) only administrative measures, (ii) a combination of administrative and criminal measures and (iii) only criminal measures to ensure enforcement in the event of REMIT breaches.

Figure 1: Penalties for REMIT breaches (number. of Member States)



**Source: Responses from 26 Member States to the Commission's questionnaire*

According to Figure 1, a majority of **15 out of the 26 Member States that responded** have opted for administrative penalties, including fines, as their primary enforcement tool to address REMIT breaches and prevent non-compliance. On the other hand, **one Member State** (Ireland) has implemented a framework based exclusively on criminal penalties, while the remaining **10 Member States that responded** (Austria, Cyprus, Germany, Denmark, Hungary, Estonia, Malta, Netherlands, Poland and Sweden) have adopted a dual approach, combining administrative and criminal penalties as a deterrent against REMIT breaches.

One NRA informed the Commission that its Member State is considering supplementing the current framework, consisting of administrative penalties only, with criminal penalties. In particular, the NRA submitted proposals to the Ministry of Justice in 2022 and 2023 to classify certain REMIT breaches, namely breaches of Article 3 and Article 5, as criminal offences. The objective of this Member State is to ensure that its national framework is aligned with the current provisions for market conduct offences under Regulation (EU) No 596/2014.[9]

Conversely, the one Member State that currently has only criminal penalties in place for enforcement in the event of REMIT breaches is considering introducing administrative fines instead, to ensure more effective enforcement.

Current rules in national legal orders regarding administrative fines

The respondents to the questionnaire provided information regarding the levels of administrative fines imposed for REMIT breaches. These levels vary significantly among Member States, with some frameworks expressing administrative fines in terms of percentages, others setting only sums, and others combining the two. For example, some respondents indicated that the applicable frameworks provide for fines of up to 8% of the annual turnover of the entity concerned, reaching up to 20% for repeat offences or taking into account financial gains. Others explained that administrative fines range from EUR 20 000 to EUR 50 000, with provisions for increasing fines based on the severity of the breaches. Other national systems provide for fines ranging from approximately EUR 300, with a possibility of fines up to 10% of the annual income of the entity concerned, accompanied by temporary restrictions on trading activities. A few Member States provide for fines reaching sums of up to EUR 6 million.

Rules in national legal orders regarding criminal penalties

As mentioned above, 11 respondents indicated that criminal penalties were provided for in their regulatory frameworks. These included criminal fines and, in some cases, imprisonment for a maximum duration of 10 years. In some cases, the framework also provided for the freezing or confiscation of assets and temporary prohibitions on professional activities.

[9] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, ELI: http://data.europa.eu/eli/reg/2014/596/2026-06-05.

For example, one respondent provided the following detailed framework of criminal penalties applicable in its Member State:

- Engaging in market manipulation: fine of up to 5 000 daily rates, or imprisonment for between 1 and 10 years, or both.
- Entering into an agreement aimed at market manipulation: fine of up to 2 500 daily rates.
- Using inside information in breach of Article 3(1)(a) of the amended REMIT: fine of up to 5 000 daily rates, or imprisonment for between 1 and 10 years, or both. If committed by a person referred to in Article 3(2)(a) or (c) of the amended REMIT: fine of up to 5 000 daily rates, or imprisonment for between 2 and 12 years, or both.
- Unlawful disclosure of inside information in breach of Article 3(1)(b) of the amended REMIT: fine of up to 2 500 daily rates, restriction of liberty, or imprisonment for between 3 months and 5 years.
- Recommending or inducing the purchase or sale of wholesale energy products based on inside information, in breach of Article 3(1)(c) of the amended REMIT: fine of up to 2 500 daily rates, restriction of liberty, or imprisonment from 3 months to 5 years.
- Disclosing a professional secret in breach of Article 17 of the amended REMIT: fine, restriction of liberty, or imprisonment for between 3 months and 5 years.
- Failure by a professional transaction arranger to inform the President of the NRA of reasonable suspicions of market manipulation, attempted market manipulation, or improper use of inside information, in breach of the new Article 15 of the amended REMIT: fine, restriction of liberty, or imprisonment for between 3 months and 5 years.

It is apparent from the responses to the questionnaire that, where Member States have a framework combining both administrative and criminal penalties for REMIT breaches, they have adopted a tiered approach where administrative penalties apply to less serious REMIT breaches, while criminal penalties apply to more serious offences. In the respondents' view, this approach allows for a more nuanced enforcement strategy, tailored to the severity of the breach in question.

For example, one respondent explained that a violation of Article 5 of the amended REMIT (prohibition of market manipulation) may constitute both a criminal and an administrative offence, depending on whether the conduct in question afftects the price of wholesale energy products. If it does not influence the price of the relevant wholesale energy products, the conduct is considered less serious and subject to penalties of an administrative nature only and vice versa.

Challenges to enforcement in the event of REMIT breaches

Three respondents mentioned that criminal penalties may have a higher deterrent effect than administrative enforcement measures. However, according to the responses submitted, Member States using criminal penalties, either exclusively or in combination with administrative measures, faced significant challenges in enforcing REMIT breaches. This resulted in lower enforcement levels in those Member States, for the reasons explained below.

Some respondents explained, for example, that implementing criminal sanctions, which require the NRA to bring a case to court, and/or a prosecutor and, where successful, are followed by trials, may constitute a challenge for the effective enforcement of REMIT. This is because of the following reasons.

Firstly, the entire process has an impact on timing. It generally takes longer to conclude a criminal case, including reaching the stage of imposing criminal penalties, than to conclude a case involving administrative penalties. This is also because, with administrative penalties, NRAs have direct fining powers on the persons implicated by the conduct in question. The Commission understands the the lengh of the proceedings may also be attributed to the compexities of market abuse in energy markets.

Secondly, according to the responses to the questionnaire, the criminal prosecution of a REMIT breach is a process with more complexities than conducts subject to administrative penalties. The complexities in the former case are linked to the criminal nature of a penalty, e.g. the required burden of proof for an NRA to successfully proceed to prosecution. Gathering sufficient evidence for the competent national body (usually by prosecutors who are not necessarily familiar with the functioning of energy markets) to establish the required standard of proof for criminal proceedings may be challenging. This is particularly the case when the REMIT breach in question relates to conduct amounting to market manipulation or inside trading, which often involves a high level of sophistication on the part of the market participants in question. According to the responses to the questionnaire, this has resulted in very few (if any) successful prosecutions, with many cases either being dropped or resulting in acquittals.

Enforcement of administrative penalties for REMIT breaches

Although there are almost no final court judgments imposing criminal penalties for REMIT breaches[10], the number of decisions and administrative fines imposed by Member States on market participants point towards a different enforcement landscape. By way of example, the two Member States with the highest number of REMIT-related decisions have reported the following:

- one of them has adopted 43 decisions for REMIT breaches since 2016, accompanied by the imposition of administrative fines of approximately EUR 10 500 000;
- the other has undertaken 46 investigations with related infringement decisions since REMIT was introduced in 2016, and 61 penalties have been applied, amounting to EUR 115 060 096.

Another Member State has reportedly imposed fines for various REMIT breaches, totalling EUR 2 560 000.

The responses to the questionnaire show that Member States with administrative fining frameworks in place for REMIT breaches were able to implement a more agile and effective enforcement strategy, and conclude a higher number of investigations, with final decisions imposing administrative fines or other administrative measures.

Deterrent effect of administrative and criminal penalties

The questionnaire also included a question on the deterrent effects of the penalties applicable in Member States. As illustrated in Figure 2 below:

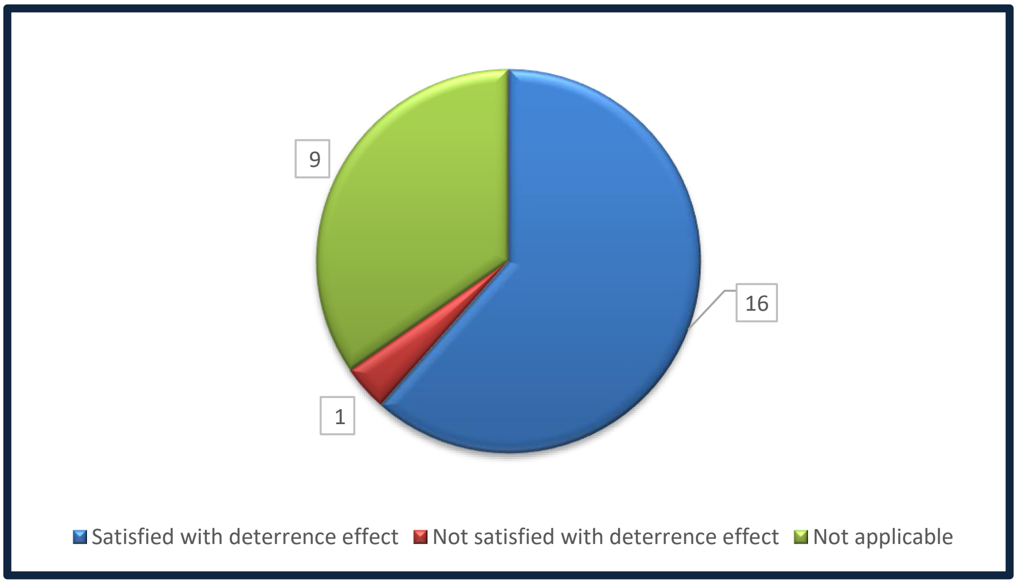
- Most respondents, 16 out of the 26, considered these measures in place to have a sufficiently deterrent effect, contributing to effective enforcement in the event of REMIT breaches. In those jurisdictions, the enforcement framework was based on administrative measures. By way of example, one of those 16 responsents mentioned that, in the four REMIT cases pursued since 2011 and penalised accordingly with administrative penalties of EUR 75 000, three out of the four market participants on

[10] The 11 Member States with criminal penalties in place provided the following replies: in Austria, Cyprus, Denmark, Hungary, Ireland, Malta, the Netherlands, Poland, and Sweden, no enforcement decisions have been adopted so far; Germany has two ongoing cases but no decisions have been adopted yet. Estonia did not provide substantive response to the relevant question.

which administrative penalties were imposed, did not commit any subsequent REMIT breach.

- However, one respondent mentioned that the levels of the administrative fines applicable in its respective jurisdiction were negligible, considering the size of market participants involved in alleged REMIT-related illegal conduct.
- 9 respondents replied that they had no available data on REMIT breaches or that no infringement decisions in their jurisdictions had led to fines.

Figure 2: Current level of satisfaction with the deterrence effect of administrative measures for REMIT breaches (by number of countries)



V. Findings

As indicated above, in accordance with Article 83(2) TFEU, the Union's competence to adopt criminal penalties can only be exercised where criminal enforcement **proves essential** to ensure the effective enforcement of the Union policy concerned. Based on the responses to the questionnaire, the information the Commission possesses at the time of writing the Report, and Article 18 of the revised REMIT, **there are currently no indications** that criminal enforcement is essential to ensure the effective enforcement of the REMIT framework. This finding is without prejudice to other areas, such as market abuse in financial services, where criminal enforcement was considereed essential to ensure the effective enforcement of the Union policy concerned.

Based on the responses to the Commission's questionnaire, and at this stage of implementation of REMIT, it appears that Member States with enforcement frameworks based on criminal penalties, either exclusively or in combination with administrative penalties, are facing significant challenges in concluding REMIT cases or reaching successful final judgements. By comparison, Member

States with enforcement frameworks for REMIT breaches based on administrative measures demonstrate higher enforcement records.

In addition, enforcement is expected to be further strengthened through the newly introduced REMIT II framework, which Member States are obliged to implement. As explained above, this new framework, not only entails reinforced NRA investigatory and enforcement powers, but also an obligation on Member States to comply with the framework of minimum harmonisation measures set out in Article 18 of the amended REMIT.

The implementation of national frameworks in line with Article 18 of the amended REMIT will strengthen REMIT enforcement and ensure its effectiveness and deterrent effect. The Commission therefore proposes to focus on implementation of these new provisions and frameworks to reap the full benefits of strengthened enforcement and assess the effects on the ground.

By 8 May 2027 and every three years thereafter, the Commission is to submit a report to the European Parliament and to the Council, assessing whether penalties for REMIT breaches are provided for and applied consistently across the Member States. If, upon completion of the implementation process for Article 18 of the amended REMIT, it appears that the approximation of criminal offences and penalties for intentional and serious cases of REMIT breaches is necessary to ensure the effective implementation of REMIT II, the Commission may reconsider, in the context of that, whether any further EU-level harmonisation is required.