Position by Europex:

Draft REMIT Implementing Acts

7 January 2014

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I. Introduction

Europex, the Association of European Energy Exchanges, has contributed substantially to the set-up and the implementation of REMIT over the last years. Coming closer to the end of the process, full implementation of REMIT is foreseen by the end of 2014, the Implementing Acts are not the final but a very important legislative step.

In this position paper – which refers to the ***Draft REMIT Implementing rules – Working document as of 20 December 2013*** – we outline what adjustments should be made within the Comitolgy procedure in order to ensure that the Implementing Acts provide the basis for a smooth and efficient implementation and functioning of REMIT.

Related EUROPEX Positions / Responses:

All Europex positions can be found on the EUROPEX website in the section of the Working Group on Transparency & Integrity, WGTI: http://www.EUROPEX.org/index/pages/id_page-43/lang-en/

II. Comments

1. The reporting obligation is with the market participant. **REMIT does not provide the legal basis to make reporting for organized market places mandatory**.

   The principle - not the obligation should be that market participants report records of transactions, including orders to trade through the organized market place where the orders are submitted and/or transactions are concluded. Only if the organized market place does not provide this reporting service the market participant can choose to report transactions and orders to trade via a trade-reporting or a trade-matching system. The reasoning for this "two-step" approach is that it is in the general interest of ACER, market participants and organized market places that the process of reporting is as consistent and harmonized as possible reducing the number of data sources to a minimum. While REMIT does not provide the legal basis to oblige organized market places to commit the reporting as their original task, this two-step approach serves as a "second-best solution". It provides a clear incentive for organized market places to do the reporting on behalf of their market participants as the rejection of this service will need to be explained. This two-step approach also accommodates the highly confidential nature of the data. Treating them with the utmost care does also mean that the reporting to ACER should be as direct as possible in order to reduce the risk of any data leakage. The possibility to choose whether to do the reporting or not can further help to avoid possible competition issues which might arise if a third party is chosen by the market participant which is in competition with the concerned market place.

The following article should be amended as follows:

Article 5 (1): Uniform rules for the reporting of records of transaction, including orders to trade

Market participants shall report records of transaction in wholesale energy products executed at organized market places including matched and unmatched orders to the Agency through the organized market place concerned, or if the market place does not report through trade matching or trade reporting systems.

2. **The deadline for the implementation of the reporting infrastructure for standardised contracts should be twelve months.** A six months implementation period as foreseen in the current draft does not take into account the needs of a thoughtful and accurate IT-implementation which is ideally based on a yearly planning. Such a period is necessary for the specification of the IT requirements, the scheduling and budgeting of human resources, the cooperation with external IT companies and service providers, the adaption of existing internal IT systems and most importantly testing. As organised market places, such as energy exchanges, are IT-driven companies a long-term planning is important in order to avoid the collision with other IT-projects. The smooth implementation of IT-projects also depends heavily on how well-engineered and well-defined the requirements for the IT infrastructure are. The later the requirements are finalised and the more they are subject to change afterwards the longer takes the overall implementation. Only a slight change of a (regulatory) requirement during the process can prolong the implementation period substantially. A period of twelve months therefore seems much more realistic also noticing that Art. 9 III of the draft gives the option *"that the Agency may enter to agreement with organized market place, trade matching or trade reporting systems to obtain records of transactions* ***before*** *the reporting obligation becomes applicable."*

We propose therefore the following change:

Art. 9 (2)
The reporting obligation pursuant to Article 6 (1) – records of transactions in standardized contracts and to Article 6 (2) – records of transactions in non-standardised contracts – shall apply 12 months following the adoption of this regulation.