

Responses to:
**Public consultation on technical requirements for data
reporting under REMIT**
&
**ACER Guidelines for the registration of Registered
Reporting Mechanisms and for the registration of
Regulated Information Services**

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I. Introduction

We welcome the opportunity to take part in the consultation on the *Technical requirements for data reporting under REMIT* as well as on the *Registration process of Registered Reporting Mechanisms (RRM) and Regulated Information Services (RIS)*. As many of the issues have already been consulted on before, the present responses take explicit reference to our previous responses to the:

- a. DG ENER consultation on the Data and Transaction Reporting Framework for Wholesale Energy Markets,
- b. the ACER consultation on the *REMIT registration format* and
- c. the ACER Recommendations to the European Commission as regards the records of wholesale energy market transactions according to REMIT.

EUROPEX - representing the interests of exchange-based wholesale electricity, gas and environmental markets - is adamant about being proactive and cooperative throughout the REMIT implementation process. This also involves the provision of both transaction and fundamental data on behalf of third parties, meaning market participants.

Energy exchanges - among other trading venues - are at the disposal of the market. They offer anonymous and non-discriminatory access to all market participants provided that the admission requirements are met. Moreover, as market operators, energy exchanges are responsible for maintaining and ensuring a fair, orderly and safe trading environment, providing for transparent and reliable wholesale price formation mechanisms and indices. The latter are on their turn widely used as benchmarks by the market in supply and retail contracts.

ACER needs access to all transactions on wholesale energy markets. We as energy exchanges are willing to work with the Agency in finding the best possible solution to achieve this. In this respect, we would like to address some additional questions which are not part of the present consultation and which we have listed in Part II, I, Question 3 of the consultation paper.

An important issue for EUROPEX is that we consider it absolutely necessary that from day one of the full implementation of REMIT market participants are required to report all trading data including orders from all market places – be they exchanges or brokers. Otherwise, there is a sincere threat of regulatory arbitrage and infringement with regard to the level playing field between orders traded through exchanges and/or brokers. Of

course, this should in no way prejudice the independent decision by trading venues whether they want to report on behalf of market participants and become a RRM.

Related EUROPEX positions / responses:

1. Response to the EC (DG ENER) Public Consultation on the Implementation of Data and Transaction Reporting Framework for Wholesale Energy Markets, 7 December 2012
2. Position paper: Clarification on the role and responsibilities of organised market places vis-à-vis market participants in general and under REMIT in particular, 2 November 2012
3. Response to the ACER public consultation on “Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of Regulation (EU) No 1227/2011”
&
Response to the discussion paper by ACER on the “Disclosure of inside information according to Article 4 (1) of Regulation 1227/2011 through platforms”, 31 July 2012
4. Response to the ACER consultation on the “REMIT Registration Format”, 21 May 2012
5. Response to the PwC/Ponton questionnaire on “REMIT - Technical Advice for setting up a data reporting framework”, 20 April 2012

All responses can be found on the EUROPEX website under the Working Group on Transparency & Integrity (WGTI) section: http://www.EUROPEX.org/index/pages/id_page-43/lang-en/

Part 1: Public consultation on technical requirements for data reporting under REMIT

On the Standards and formats for reporting

I. Do you agree that for the reporting of energy derivatives, the same standards applicable to the values taken by each field of information should apply under REMIT as under MiFID and EMIR? (For example ISO Currency standard identifiers for Currency information, ISO Country Codes for Country information, etc.).

1. If applicable to the types of markets covered under REMIT then we agree that the same standards for the values required by each field of information should equally apply under REMIT, MiFID and EMIR. As REMIT comprises more elements of information than MiFID or EMIR, notably for orders to trade, a specific standard should be developed.
2. It would be very helpful if the agency could provide a complete list of ISO standard identifiers intended to be used.

II. What single standard and single format do you think the Agency should recognise?

a. For reporting of transactions from organised market places that are exchanges

3. Market participants under Article 8(1) of REMIT have an obligation to report, and can decide to fulfill this reporting obligation via intermediaries or third parties, hence energy exchanges.
4. Organised market places such as energy exchanges may decide to act as a third party reporting on behalf of market participants (meaning: becoming a RRM as proposed in this consultation). Providing this service and becoming a RRM should always be based on a voluntarily commitment and must not be mandatory.
5. A reporting obligation for organised market places is in contradiction with the reporting schemes provided by Article 8 under REMIT in which the market participant is ultimately responsible for the transaction reporting. Any deviation of this responsibility would jeopardise the correct implementation of REMIT itself.
6. Nevertheless, from a pragmatic point of view, we recognise that it is in the interest of ACER to have a regular exchange of information with organised market places. Paragraph 2 of Article 8(3) points in this direction: “Without prejudice to the first subparagraph of this paragraph, the implementing acts referred to in paragraph 2 may allow organised markets and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions”.
7. EUROPEX would like to emphasise that REMIT via Article 8(3) does not require energy exchanges to report data in their possession. This also implies that there is no legal obligation to provide this data to ACER.
8. Some members of EUROPEX, however, are open to discuss the possibility to provide data on transactions and orders to trade effectuated on their platforms to the extent that is legally possible within REMIT.
9. Therefore, if exchanges are to provide transaction data, we esteem an ACER generated code for the different products to be better than using an ISIN code that constitutes a series of illegible numbers or a proprietary code from each organised market place. We prefer a code that splits the product into separate dimensions, with each dimension representing a well-defined and legible value.

10. Underlining that the reporting obligation under REMIT lies with the market participants, recognised reporting standards under MiFID and EMIR for energy derivatives could be adopted where possible, irrespective of the used trading platform.
11. In order to fulfill the additional reporting obligations of market participants under REMIT, the development of tailor made standards is required.. In the elaboration of these new standards certain guiding principles need to be adopted. The single standard and single format recognised by ACER need to be neutral, non-discriminatory and open for all relevant parties on a non-commercial basis. Irrespective of the used trading platform (OTC or exchanges) the same standards and requirements for trade reporting (including information regarding orders) should apply. The standards used should be easily adaptable in terms of design and governance procedures in order to allow for the necessary flexibility for the development of new products and services. The reporting requirements should in no way limit innovation.
12. Recognising the above mentioned guiding principles, the additional reporting code developed by ACER with a particular focus on spot markets should establish a comprehensible framework with easily recognisable product dimensions. Alignment with open and recognised standards as the ISO codes for, amongst others, countries and currencies is essential in order to develop an efficient and transparent reporting framework.

b. For reporting of transactions from organised market places that are not exchanges

13. Standards and formats should be the same for all organised market places, irrespective of whether they are exchanges or not.

c. For reporting of transactions through confirmation services

14. No answer

d. For reporting of electricity nominations / scheduling

15. Please see our answer to e)

e. For reporting of gas nominations / scheduling

16. Even though the exchange has information on all transactions, it should be taken into account that derivative contracts have a longer delivery span than spot contracts. This opens room for counterparty changes along the delivery period as well as counterparty changes before the start of delivery. In other words, the parties involved in an executed transaction are not by default the parties involved (shippers) in the nomination. The final positions are only known by the TSOs, and therefore the information of the exchange on nominations is incomplete and potentially outdated.

III. The Agency has identified a set of common standard codes which it proposes being used in the new reporting framework (see Annex I). Do you think these standards are the relevant ones?

17. Yes. The standards and existing codes are relevant, but as REMIT encompasses spot products that are not necessarily standardised in terms of reporting, an additional standard for spot products is imperative.

IV. If a format is recognized by the Agency, what governance provisions should the Agency require to ensure the quality persists?

18. The security framework for ACER data protection needs to be robust.

19. It would be easier to comment directly on the governance provisions proposed by ACER.

V. Do you have comments on these standards?

20. Once again, a standard needs to be defined for spot products.

VI. What are the practical implications of the use of these standards and formats for the energy industry?

21. With the emergence and up-dates of various regulations that overlap with different types of energy products, delivery markets, transaction and settlement types, standard reporting formats across different regulations as well as different products that are covered under the same regulation would facilitate the collection of data between the parties. Furthermore, we believe it to be important that different regulatory entities should be working together on different regulations within the energy industry so that the same types of standard formats may allow for an efficient monitoring. These principles should be applied to limit practical implementation costs.

VII. Are there other formats and standards the Agency should consider for recognition?

22. An ACER generated code for the different products should be used. It is preferable to an ISIN code that is a series of illegible numbers or a proprietary code from each organised market place. A code that splits the product into separate dimensions, with each dimension containing a well-defined and legible value, could be a possible option. Therefore, a taxonomy code should be used, such as: Delivery Area_Commodity_Delivery Type_Settlement__Load Type, e.g.

- FR_Power_Intraday_Physical_Quarterly-Hour for a 15-minute product tradable in intraday for delivery in France or
- DE_Power_Day-ahead_Physical_Hour for an hourly product tradable in day-ahead for delivery in Germany

23. EUROPEX is against ISIN information as it is limited to debt securities, shares, options, derivatives and futures and imposes additional costs.

VIII. Do you think that the taxonomy proposed in Annex II is the relevant one?

24. From the Technical Standards for Trade Reporting it is not clear for what purposes the taxonomy will be used. Was it intended for use for nominations or scheduling, it would have to be amended.

IX. Do you think the first criteria on the delivery market (as country) should rather be the delivery zone or bidding zone?

25. The bidding zone should be used for the delivery market criteria.

X. Does the taxonomy represent your view of the structure of the wholesale energy markets relevant to REMIT? For each dimension, are the categories given exhaustive? If not, please offer suggestions.

26. Further clarifications required in the taxonomy:

- Transaction type is unclear
- Profile type is unclear
- One hour block is missing in duration

XI. Should Regulated Information (Transparency/Inside Information) be categorised using at least the first two criteria of the taxonomy?

27. From a surveillance point of view regulated information should take a standardised form, but should not be so vague that it does not provide sufficient information.

28. According to REMIT the publication of information should be in accordance with the Transparency Regulation and Network Codes. Therefore, it would be best to align the categories with what is provided in these two reference documents. Currently, according to the up-dated Transparency Regulation, ENTSO-E is drafting a manual of procedures concerning formats of data to be provided under the up-dated Transparency Regulation. Against this background, it would be best to extract the categorisation from there as it constitutes the most up-to-date version of Regulation EC No. 214/2009. The Network Codes should be used additionally.

XII. Would you suggest any simplifications or additions to the taxonomy?

29. No answer.

Part 2: .ACER Guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services

I. General questions

1. The registration process for both Registered Reporting Mechanisms and Regulated Information Services comprises two stages: Firstly, the Agency will review a written application, and if appropriate make a provisional registration (pre-registration of the applicant); secondly, the Agency will make a final registration subject to successful integration with the Agency's technology as described in the Agency's „*Technical Specifications for Registered Reporting Mechanisms and Regulated Information Services*” document. For reasons of operational reliability, the technical specifications document will be kept confidential and applicants will have to sign a non-disclosure agreement before receiving a copy of the technical specifications document. This is a best practice applied by national financial regulators under EU financial market rules which the Agency also intends to apply for REMIT purposes. Please indicate your views on the proposed approach for the registration process.

30. In line with our response to the ACER consultation on the REMIT registration format, we welcome the two stage registration process proposed by the Agency.

31. ENTSO-E currently implements a European Transparency Platform. Exchanges are considering and are already involved in the set-up of reporting structures towards this platform. Requirements for RRM, RIS and reporting to the ENTSO-E platform should all be aligned, and ACER should lead this process in order to avoid any unnecessary burdens for the reporting companies.

2. According to the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER's consultants, it is currently considered that only Registered Reporting Mechanisms and Regulated Information Services with legal status in an EU Member State or an EEA country should be eligible to become a Registered Reporting Mechanism or Regulated Information Service. Please indicate your views on this suggestion.

32. To ensure a consistent quality of data and provide a level playing field for RRM and RISs, the focus should be on accentuating the need that all entities fulfill equal standards with regard to data protection laws and the enforceability of relevant EU laws.

33. Under the precondition that these standards are met, RRM and RISs should not be required to have a legal status in an EU Member State or an EEA country.

3. Do you have any general remarks on the draft RRM and or draft RIS Guidelines

34. EUROPEX has several questions regarding the implementation of RRM and REMIT which it would like ACER to clarify in detail

- a. Article 8.1 REMIT provides that a market participant can have its transactions reported "on its behalf". As energy exchanges, we have access to all matched transactions. However, our interpretation for reporting under REMIT and as a RRM is that the reporting should cover only one side of the transaction each time. This is because such reporting is "on behalf" of the market participant and in the case of energy exchanges the participant does not know who its matched counterparty is. Hence, the RRM should report exactly what the market participant would report even though it has access to more data than the market participant. Is this view shared by ACER?
- b. Another question relates to the potential cooperation between RRM: How can such a cooperation be ensured in the best way in order to preserve confidentiality and the necessary Chinese walls? As a side question: In case a market participant chooses a RRM to report all its trades, should the RRM receive the information directly from the energy exchanges or should the energy exchanges send it to the market participant who will in turn send it to its RRM? In all cases, questions of confidentiality should be addressed as we are concerned that potential conflict of interests could arise if a RRM also happens to be a competitor.
- c. Is it possible for a market participant to choose more than one RRM to report its transactions?
- d. Does a RMM have the possibility to choose which transactions it accepts to report or do does it have an obligation to report all transactions of a market

participant if it has been chosen as a RRM (e.g., can a RRM limit its service to transactions on certain exchanges only, to certain geographical zones, etc.)?

- e. Is it foreseeable that a “grandfathering” clause could be created for those entities which would like to apply to become a RRM and (i) already fulfill most of the requirements proposed in this consultation paper as a result of their status under national law and (ii) have several years of experience in reporting transactions?
- f. How will the foreseen *Framework for the Implementation of Data and Transaction Reporting* by DG ENER be taken into consideration given that the results of the consultation on this matter have not yet been published?
- g. Where/ in which document will the requirements for data handling and storage by ACER be stipulated?

35. We strongly oppose the requirement in Section 5.2. to provide an annual report. RRMs are already obliged to meet the RRM rules at all times. Also, in case of a serious disruption, ACER proposes the possibility to require an external auditor’s report. Given these facts, there is no added value of an annual report.

36. The RRM Guidelines define a biannual renewal of registration in Section 5.5. It should be fully sufficient that ACER approves the RRM initially and then obliges it contractually to meet the criteria at all times. To what extent does the registration renewal add to the fulfilment of RRM requirements which are already verified through the proposed registration procedure and reporting requirements?

II. Questions concerning the draft RRM Guidelines

1. The aim of the Guidelines is to ensure operational reliability of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. Should Registered Reporting Mechanisms be required to have an ISO certification 27001 or similar to become a Registered Reporting Mechanisms as proposed in the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER’s consultants?

37. In line with our answer to the ACER consultation on the “*Implementation of Data and Transaction Reporting Framework for Wholesale Energy Markets*”, we welcome the set-up of a validation scheme for companies applying to become RRMs. We positively recognise that the experience of existing market venues is taken into consideration for the development of the scheme.

38. EUROPEX deems such a scheme to be beneficial for assuring the quality and reliability of data through verifying security standards and IT requirements. However, no specific certification standard should be defined in the guidelines.

2. The draft RRM Guidelines currently foresee a simplified registration procedure for trade repositories registered according to EMIR. Do you agree with this approach?

39. We believe that no simplified registration procedure should be offered selectively to individual entities.

40. The registration procedure is important to ensure the quality of data provided by RRM. To deliver this quality consistently, all RRMs should be generally obliged to follow the same registration procedure.

41. In line with our response to the consultation on the *“Implementation of Data and Transaction Reporting Framework for Wholesale Energy Markets”*, we would like to point out that for the sake of a level playing field the requirements of becoming a RRM should be the same for everybody. Hence, there should be no differentiation, e.g., between organised market places and the reporting by market participants themselves.

3. Please express your views on the RRM criteria proposed.

42. EUROPEX generally welcomes the proposed RRM criteria given that they are applied to all RRMs without discrimination and that the decision to become an RRM is on a voluntary basis in accordance with the provisions of REMIT.

43. The wording in 4.1. violates the principle of identical standards for all market venues. To align 4.1. with standards under EMIR, the wording should be changed to “The RRM shall provide access to the Agency to the information reported by market participants”.

44. In order to ensure identical standards across market venues, the requirement for record keeping (5.4.) should be limited to 5 years.

45. In our response to the *PwC/Ponton questionnaire*, we agreed with the following organisational requirements for the RRM criteria: nature of eligible organisation, technical/ organisational capability, IT standards used, IT security, validation of the reporting mechanism.

46. The proposed RRM criteria comprise the following requirements: reporting of information to ACER, validation of input, a standard output format, validation of output, secure processing of data, recovery provisions, service support and clarity about fees charged.

4. Should Registered Reporting Mechanisms, for reasons of operational reliability, be required to support their annual reports, upon request and with at least 12 months' notice, by a recognised external auditor's report which confirms that the Registered Reporting Mechanism met all the criteria in the preceding 12 months?

47. We are highly critical of requiring an external auditor's report as it does not increase the operational reliability of RRM's and is redundant with the proposal of annual reports being already required by RRM's.

48. An external auditor's report should only be required under exceptional circumstances where ACER has serious concerns (e.g. following the disruption of services) that a RRM does not meet the criteria.

49. The definition of a 12 month reporting period seems to be an arbitrary choice for requesting a confirmation report.

50. The proposed registration procedure and in particular the criteria set out for RRM's are designed to ensure that RRM's are able to report the required information and that the confidentiality, integrity and protection of the information is guaranteed.

51. The registration procedure and RRM criteria are built on the experience of all stakeholders and were gathered through public consultations. They have rightly been defined to ensure that RRM's are able to fully meet all requirements.

52. Requiring an external audit would establish a different treatment of RRM's and RISs as no such report is proposed for the latter.

III. Questions concerning the draft RIS Guidelines

1. Do you agree with the three different types of Regulated Information Services proposed and the distinction made concerning their reporting of information?

53. The overall aim of the reporting of information by RIS should be a reliable and efficient reporting fulfilling all defined requirements.
54. EUROPEX believes that a direct transmission of information from the RIS to the Agency provides the best basis for such reporting.
55. Furthermore, nominations for voluntarily becoming a RIS should be performed by the Agency directly in order to ensure a high level of efficiency of the process.

2. Do you agree that ENTSO-E and –G transparency platforms should play a crucial role in the reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including network codes and guidelines, and be treated differently than other information sources?

56. No. The overall principle should be that existing data sources are used (e.g. transparency platforms run by energy exchanges).
57. As we have already stated in the past, the obligation for ENTSO-E and –G to report transparency information creates significant conflicts of interest. Transmission System Operators (TSOs) act as active energy trading participants procuring balancing resources or selling renewable energy in some Member States. As a result, they cannot be considered neutral parties, and hence are not qualified to take responsibility for the reporting of fundamental data.
58. For the same reason, information provided by TSOs should not be treated differently from other information by other sources. In particular, no exclusive access to fundamental data shall be granted to TSOs. This is a prerequisite for a level playing field ensuring competition among different transparency information providers.

3. Do you agree that it should be sufficient that inside information platforms make their information available to the Agency through web-feeds?

59. The focus must be on assuring the quality of the provided data. How the data is made available is a technical question for which web-feeds provide a sufficient and cost-efficient solution.

60. EUROPEX understands web-feeds as user specific web communication as it is already in use by market places.

61. In this regard, we would like to request the Agency to clarify more specifically what it refers to with the term 'web-feed' and what it means by possible other options of data provision.

4. Do you agree that the technical specifications document should be the same for Regulated Information Services reporting individual and non-aggregated information than for Registered Reporting Mechanisms reporting confidential trade data due to the same sensitivity of the information?

62. As EUROPEX believes that reporting procedures should be designed to maximise reporting efficiency, creating identical specifications for RIS and RRM would help avoid double reporting requirements. Hence, EUROPEX agrees with using identical technical specifications for both.