

Draft

REMIT

**ACER Guidelines
for the registration of
Registered Reporting Mechanisms
and
for the registration of
Regulated Information Services
for ensuring operational reliability
according to Article 12 of Regulation (EU) No 1227/2011**

Public Consultation Document

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22 March 2013

The Agency for the Cooperation of Energy Regulators (“the Agency” or “ACER”) is currently actively working to facilitate a smooth implementation of Regulation (EU) No 1227/2011 on wholesale Energy Market Integrity and Transparency (“REMIT”). As part of this exercise, several consultative papers on the implementation of REMIT were and will be consulted upon. One specific aspect of REMIT is reporting of records of transactions, including orders to trade, by market participants through Registered Reporting Mechanisms, another specific aspect of REMIT is reporting of regulated information by market participants through registered Regulated Information Services. Both the registration of Registered Reporting Mechanisms and the registration of Regulated Information Services shall be based on ACER Guidelines on the basis of Article 12 of REMIT to enable the Agency to ensure operational reliability of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT.

The Agency invites all interested parties to provide comments to the Public Consultation Paper by 7 May 2013, 12.00 noon, Central European Time, to consultation2013R01@acer.europa.eu.

Related Documents

- Regulation (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>
- ACER Work Programme 2012,
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf
- 2nd edition of ACER Guidance on the application of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 28 September 2012,
<http://www.acer.europa.eu/remit/Documents/2nd%20edition%20of%20ACER%20Guidance%20on%20the%20application%20of%20REMIT.pdf>
- ACER Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 23 October 2012,
<http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions.pdf>
- REMIT Technical Advice for setting up a data reporting framework – June 2012
http://ec.europa.eu/energy/gas_electricity/consultations/doc/20121207_wholesale_energy_markets_remit_report.pdf

Background

When the REMIT implementing acts come into force, market participants will report transactions, including orders to trade, to the Agency in accordance with Article 8 of REMIT. Intensive planning is under way at the Agency to prepare such transaction reporting. On 23 October 2012, the Agency has provided the Commission with the ACER 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 REMIT.

A crucial part of the new reporting framework according to Article 8 of REMIT and the implementing acts is the reporting of records of transactions, including orders to trade from market participants through Registered Reporting Mechanisms to the Agency. The registration of such Registered Reporting Mechanisms shall be based on ACER Guidelines for the registration of Registered Reporting Mechanisms.

Another crucial part of the new reporting framework according to Article 8 of REMIT and the implementing acts is the reporting of regulated information through Regulated Information Services to the Agency. The registration of such Regulated Information Services shall be based on ACER Guidelines for the registration of Regulated Information Services. The registration becomes effective when the Agency adds the name of the person who has been registered as a Regulated Information Service to the Agency's list of Regulated Information Services on its website.

This public consultation document was prepared on the basis of the ACER Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of REMIT from 23 October 2012. It is without prejudice to the Commission's Implementing Acts according to Article 8 of REMIT.

Call for comments

The Agency hereby arranges a public consultation on the draft ACER Guidelines for the registration of Registered Reporting Mechanisms and Regulated Information Services. Comments are welcome on all aspects of the issue. However, the Agency has included a number of questions to draw respondents' attention to those areas where it would be particularly helpful to receive feedback.

Consultation questions

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.

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

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?
2. The draft RRM Guidelines currently foresee a simplified registration procedure for trade repositories registered according to EMIR. Do you agree with this approach?
3. Please express your views on the RRM criteria proposed.
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?

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?
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?

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

Public Workshop

A public workshop will be held at the Agency in Ljubljana on 25 April 2013 12.00 – 16.30. Those who intend to participate in the public workshop should register online via the Agency's website under the heading "Events".

Consultation period

The consultation closes on 7 May 2013, 12.00 noon, Central European Time. Responses to the consultation should be sent to consultation2013R01@acer.europa.eu.

REMIT

ACER Guidelines for the registration Of Registered Reporting Mechanisms for ensuring operational reliability according to Article 12 of Regulation (EU) No 1227/2011

1 Scope of application

According to Article 12 of Regulation (EU) No 1227/2011 (REMIT), the Agency shall ensure the confidentiality of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems and shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. These ACER Guidelines on the registration of Registered Reporting Mechanisms are considered an appropriate mechanism to ensure operational reliability of information received pursuant to Article 8(1) of REMIT in connection with the relevant REMIT implementing acts from the Commission referred to in Article 8(2) of REMIT.

These guidelines address:

- (1) A *Registered Reporting Mechanism*;
- (2) A person applying for registration as a *Registered Reporting Mechanism*.

“Registered Reporting Mechanism (RRM)” means a person registered by the Agency to provide the service of reporting records of transactions, including orders to trade according to Article 8(1) of REMIT to the Agency on behalf of market participants. The RRM must act in accordance with the Agency’s registration criteria.

Person shall have the same meaning as in Article 2(8) of REMIT.

A Trade Repository according to Regulation (EU) No 648/2012 fulfilling the respective requirements according to Article 55 et seq. of Regulation (EU) No 648/2012 shall be considered as registered RRM if all the required technical implementing standards have been implemented in full.

2 Registration process

The registration process 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.

Persons considering applying for a *RRM* status are encouraged to review the Agency's „*Technical Specifications for Registered Reporting Mechanisms and Regulated Information Services*” document before submitting the application form. For a copy of the technical specification, please contact the Agency's Market Data Management Sector under the Agency's Market Monitoring Department.

Please note that the Agency will ask applicants to sign a non-disclosure agreement before receiving a copy of the technical specification.

The Agency will only register a *RRM* once all stages are successfully completed and demonstrable.

Registration as a *RRM* becomes effective only when the Agency adds the name of the person who has been registered as a *RRM* to the Agency's list of *RRMs* on its website. From the date of listing of the *RRM* on the ACER Web site, the *RRM* will be recognised as such.

3 Application for registration as a Registered Reporting Mechanism

A person with legal status in an EU/EEA country wanting to be registered as a *RRM* and be included on the Agency's list of *RRMs* must apply to the Agency by submitting the following information:

- (1) Fulfilment of the technical requirements to report information according to REMIT, in particular
 - (a) *RRMs* shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information including non-repudiation, minimise the risk of data corruption and unauthorised and access and to prevent information leakage before reporting;
 - (b) *RRMs* shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services at all times;
 - (c) *RRMs* shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request and/or initiate re-transmission of any such erroneous or missing reports. *RRMs* shall be committed to improve quality and reliability of data in accordance with REMIT so that a high level of operational reliability of the Agency's tasks are ensured;
 - (d) *RRMs* shall have adequate contingency plan to assure availability of service during the operating time of its all associated Market Participants.
- (2) Details and evidence of the fees or other schemes for cost recovery and fee application rules it proposes to charge for the service provided to any person submitting record of transactions, including orders to trade, for reporting to the Agency;
- (3) Any evidence to demonstrate that the person is established in any of the EU Member State or an EEA country, and that it operates, with the inclusion of the infrastructure designated, in one of the Member States under the jurisdiction of the EU law;
- (4) All additional documents, explanations and information the Agency may require.

When considering an application for registration as a *RRM*, the Agency may:

- (1) Carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators and/or competent authorities that may be able to provide any clarification;
- (2) Ask the applicant or its specified representative to answer questions and explain any matter the Agency considers relevant to the application;

- (3) Take into account any information which it considers appropriate to the application; and
- (4) Request that any information provided by the applicant is verified in such a manner as the Agency may specify.

The applicant is responsible for the establishment, production and delivery of an RRM system. The Agency does not accept legal responsibility for any losses or damages arising from the failure of these systems and any related process and procedure. In particular, the Agency's high-level review of the business continuity and security policies of each applicant does not imply any endorsement, guarantee of quality or acceptance of responsibility for the adequacy of any applicant's business continuity or security systems.

4 Criteria for registration as a Regulated Reporting Mechanism

The Agency will register a person as a *RRM* only if it is satisfied that the person has adequate policies and arrangements in place to report the information required under Article 8 of REMIT as quickly as possible, and no later than the close of the following working day.

The *RRM* must also assure that confidentiality, integrity and protection of the information which is received, maintained from any Market Participant and then reported to the Agency, is guaranteed. The same principle must apply if the information is stored or treated on any system external to the *RRM* premises.

4.1 Reporting of information

The *RRM* must make available to the Agency the information reported on behalf of market participants.

An *RRM* must obtain and record that market participants agree to use its services and disclose this periodically to the Agency at least once a year.

4.2 Validation of input

A *RRM* must have adequate systems and controls to ensure that:

- (1) there is certainty about:
 - (a) the identity of any person that communicates, to the *RRM*, information on behalf of a market participant;
 - (b) if different from (a), the identity of the market participant or organisation on whose behalf the information is submitted; and
 - (c) the authority of the person to submit the information on behalf of the market participant or organisation;
- (2) there is no significant risk of data corruption in the input process;
- (3) there is no unauthorised access to unpublished information.

4.3 Output format

A *RRM* must report information to the Agency in a standard format defined in the Agency's technical standards for the reporting of records of transactions, including orders to trade.

4.4 Output content

The reported information must contain the information stipulated in Article 8(1) of REMIT in connection with the relevant REMIT implementing acts referred to in Article 8(2) of REMIT.

4.5 Validation of output

A *RRM* must include a mechanism to provide certainty to the market participant reporting information to the Agency that the information has been reported to the Agency by a *RRM*.

4.6 Processing

A *RRM* must have adequate systems and controls to ensure that information is processed securely and well established procedures to prevent the misuse of information by any of its staff. This means that a *RRM* should:

- (1) have a working environment that is secure;
- (2) free of unauthorised surveillance;
- (3) have computer-based systems that incorporate access controls and auditable record; and
- (4) record external telephone calls concerning regulated information.
- (5) have appropriate terms in its contracts of employment to ensure that all staff have access to information owe a duty of confidentiality to the *RRM*.

4.7 Recovery provisions

A *RRM* must make adequate provision for possible disruptions to its operations. Recovery provisions must be sufficient to ensure that there is minimum disruption to the continuous operation of the *RRM*.

4.8 Service support

A *RRM* must provide service support to its users during the hours it would normally report information and, at least, any working hours of any business days of its reporting persons.

4.9 Charges

A *RRM* must set out clearly the services it provides and the fees it charges for those services as well as the rules which regulate the fees (e.g. including volume discounts and fee schemas).

A *RRM* must supply, free of charge, the information to be reported on behalf of market participants according to Article 8(1) of REMIT, exclusive of all other information, to the Agency.

5 On-going obligations and notification requirements

5.1 Requirement to meet the criteria at all times

A *RRM* must, at all times, meet the *RRM* requirements.

5.2 Annual report

A *RRM* must submit to the Agency an annual report which confirms that the *RRM* met all the criteria in the preceding 12 months.

5.3 Notifications

A *RRM* must inform its users and the Agency without delay if its operations are disrupted. No later than 5 working days from the disruptions, should provide to the Agency only a report about the reasons of the disruptions, and eventually, the actions taken to prevent any repeated event.

A *RRM* must provide the Agency with the names and contact details of its competent staff to assist the Agency with its regulatory responsibilities.

A *RRM* must provide the Agency without delay any information that the Agency may reasonably require for the performance of its functions.

A *RRM* must be able to demonstrate every time there is a failure that no information has been unreported as a result of an interruption.

A *RRM* that learns of a breach of any of its security measures must:

- (1) immediately notify the Agency of the breach; and
- (2) as soon as possible give the Agency with a details report of the breach and any steps taken to correct that breach.

5.4 Record keeping

A *RRM* must have effective arrangements for making and retaining, for [7] years unless other rules apply in any other relevant national or international law, adequate records of all matters regarding the processing of information according to Article 8(1) of REMIT.

5.5 Renewal of an existing registration

The aim of renewal of a registration is to verify on a bi annual base, that the conditions which were in place at the time of the renewal are still in place.

The renewal procedure must also verify that any modification intervened in the interval between a registration/renewal and its subsequent, is respectful of the rules set to certify an *RRM*, and that the changes have not modified especially the requirements linked to reliability of the offered service to the Market Participants.

Draft

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**ACER Guidelines for the registration
of Regulated Information Services**
for ensuring operational reliability
according to Article 12 of Regulation (EU) No 1227/2011

1 Scope of application

According to Article 12 of Regulation (EU) No 1227/2011 (REMIT), the Agency shall ensure the confidentiality of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. The Agency shall take all necessary measures to prevent any misuse of, and unauthorised access to, the information maintained in its systems and shall identify sources of operational risk and minimise them through the development of appropriate systems, controls and procedures. These ACER Guidelines on the registration of Regulated Information Services are considered an appropriate mechanism to ensure operational reliability of information received pursuant to Article 8(5) of REMIT in connection with the relevant REMIT implementing acts from the Commission referred to in Article 8(6) of REMIT.

These guidelines address:

- (1) *A Regulated Information Service;*
- (2) *A person applying for registration as a Regulated Information Service.*

“Regulated information“ means inside information to be disclosed according to Article 4(1) of REMIT and transparency information to be published according to Regulations (EC) No 714/2009 and (EC) No 715/2009.

“Regulated Information Service (RIS)” means a person registered by the Agency to provide the service of reporting regulated information according to Article 8(5) of REMIT to the Agency on behalf of market participants in accordance with the Agency’s certification criteria.

These RIS Guidelines distinguish the following types of Regulated Information Services:

- (1) Platforms for the disclosure of inside information according to Article 4(1) of REMIT on behalf of market participants (hereafter referred to as “inside information platforms”) providing the Agency with inside information according to Article 8(5) of REMIT simultaneously with the disclosure of the information according to Article 4(1) of REMIT;
- (2) A European Transparency Platform from ENTSO-E or ENTSO-G (hereafter referred to as European Transparency Platforms) according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes, fulfilling the respective requirements of the relevant transparency guidelines and reporting to the Agency transparency information simultaneously according to Article 8(5) of REMIT with the publication of the transparency information;
- (3) Platforms for the publication of transparency information according to Regulations (EC) No 714/2009 and EC (No) 715/2009 (hereafter referred to as “transparency platforms”) providing the Agency with individual non-aggregated information according to Article 8(5) of REMIT insofar as not already reported through a European Platform.

2 Registration process

The registration process comprises two stages. Firstly, the Agency will review the written application, and if appropriate make a provisional registration; secondly, the Agency will make a final registration subject to successful integration with the Agency's technology.

The Agency will only register a *Regulated Information Service* once both stages are successfully completed.

Registration as a *Regulated Information Service* becomes effective only when the Agency adds the name of the person who has been registered as a *Regulated Information Service* to the Agency's list of *Regulated Information Services* on its website.

3 Application for registration as a Regulated Information Service

A person wanting to be registered as a *RIS* and be included in the Agency's list of *RIS*s must have successfully completed the Agency's application process and comply with all on-going requirements. The application shall demonstrate the following application requirements:

- (1) Fulfilment of the technical requirements to report information according to REMIT, in particular
 - (a) *RIS*s shall meet the standards for providing the Agency with information according to Article 8(5) of REMIT in connection with the REMIT implementing acts;
 - (b) *RIS*s shall have sound security mechanisms in place designed to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access and to prevent information leakage before publication or reporting;
 - (c) *RIS*s shall maintain adequate resources and have back-up facilities in place in order to offer and maintain its services;
 - (d) *RIS*s shall have systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request and/or initiate re-transmission of any such erroneous or missing reports. *RIS*s shall be committed to improve quality and reliability of data in accordance with REMIT so that a high level of operational reliability of the Agency's tasks is ensured.
- (2) *RIS*s shall submit all additional documents, explanations and information the Agency requires.

When considering an application for registration as a *Regulated Information Service*, the Agency may:

- (1) Carry out any enquiries and request any further information which it considers appropriate, including consulting other regulators;
- (2) Ask the applicant or its specified representative to answer questions and explain any matter the Agency considers relevant to the application;
- (3) Take into account any information which it considers appropriate to the application; and
- (4) Request that any information provided by the applicant is verified in such a manner as the Agency may specify.

A *Regulated Information Service* must, at all times, meet the *Regulated Information Service* requirements.

The creation, production and delivery of *RIS* systems remain the responsibility of the applicant, and the Agency does not accept legal responsibility for any losses or damages arising from the failure of these systems. In particular, the Agency's high-level review of the business continuity and network security policies of each applicant does not imply any endorsement, guarantee of quality or acceptance of responsibility for the adequacy of

any applicant's business continuity or network security systems.

4 Criteria for registration as a Regulated Information Service

Prior to the completing the Agency's application process an RIS must have successfully established a technical connection and passed all technical and security criteria as laid out by the Agency. The criteria for the registration as a Regulated Information Service shall be distinguished by type of Regulated Information Service:

(1) Inside information platforms

Inside information platforms disclosing inside information on behalf of market participants according to Article 4(1) of REMIT by meeting the RIS criteria for the disclosure of inside information of the ACER Guidelines shall make the information available through web feeds in a format that facilitates the consolidation of the information with similar data from other sources.

Inside information platforms shall be

a) identified by market participants as their inside information platform in the registration format

b) nominated by NRAs in separate communication to the Agency as an Accepted Market Practice as described in the ACER Guidance and transparency platforms that are not reporting confidential information.

(2) European Platforms

European Platforms shall enter into bilateral agreements with the Agency to ensure that transparency information is made available to the Agency by ensuring operational reliability.

(3) Transparency platforms reporting individual non-aggregated information

Transparency platforms reporting individual non-aggregated information shall be registered on the basis of the Agency's „*Technical Specifications for Registered Reporting Mechanisms and Regulated Information Services*” document, which will be available by the Market Data Management Team in the Agency's Market Monitoring Department. Please note that the Agency will ask applicants to sign a non-disclosure agreement before receiving a copy of the technical specification document. Persons considering applying for a *Regulated Information Service* status are encouraged to review the Agency's technical specification document before submitting the application form.

The *Regulated Information Service* must provide the Agency with the regulated information reported on behalf of market participants.

5 On-going obligations and notification requirements

Requirement to meet the criteria at all times

A *Regulated Information Service* must, at all times, meet the *Regulated Information Service* requirements.

Annual report

A *Regulated Information Service* must submit to the Agency an annual report which confirms that the *Regulated Information Service* met all the criteria in the preceding 12 months.

Notifications

A *Regulated Information Service* must inform its users and the Agency without delay if its operations are disrupted.

A *Regulated Information Service* must provide the Agency with the names and contact details of its competent staff to assist the Agency with its regulatory responsibilities.

A *Regulated Information Service* must provide the Agency without delay any information that the Agency may reasonably require for the performance of its functions.

A *Regulated Information Service* that learns of a breach of any of its security measures must:

- (3) immediately notify the Agency of the breach; and
- (4) as soon as possible give the Agency with a details report of the breach and any steps taken to correct that breach.

Record keeping

A *Regulated Information Service* must have effective arrangements for making and retaining, for [7] years unless other rules apply in other relevant national or international law, adequate records of all matters regarding the processing of information according to Article 8(2) of REMIT.