

Agency for the Cooperation of Energy Regulators

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**EFET Response to ACER public consultation on
REMIT 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 (PC_2013_2013_R_01)**

Introduction

The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to respond to the ACER public consultation on the REMIT Guidelines for the registration of RRM and RISs, and recognises the establishment of the RRM/RIS mechanisms as a robust way of reporting records of transactions and fundamental transparency information to ACER.

However, EFET identifies a number of critical aspects in the context of REMIT data reporting framework:

- RRM/RIS should not limit at any point in time the choice of a market participant to perform reporting of the records of transactions (including orders to trade), disclose and publish transparency information directly to ACER, or delegate it to a 3rd party service provider;

¹ European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information, please refer to: www.efet.org.

- the registration requirements for individual market participants directly undertaking reporting arrangements on their own behalf should not be the same as for those entities providing 3rd party reporting services to clients. The requirements for market participants who choose to become RRM should only be kept to an absolute necessary minimum to ensure they can adhere to the relevant reporting standards and avoid any undue burden;
- where a firm chooses to report through a 3rd party RRM there is a clear recognition of the liability transferred to the RRM for discharging the reporting obligation. This liability transfer must be fully reflected in the registration requirements for the 3rd party reporting services;
- EFET urges ACER to consider the cost and implication requirements that result from its initial specifications. These specifications need to be made clearer and be outlined in more detail as part of this process, as they will impact the decisions of individual market participants of how they report transactions and on the design of 3rd party RRM solutions.

Our answers to the specific consultation questions are set out in the **Annex 1** further below.

Annex 1: EFET response to the specific consultation questions

I. General Questions

1. EFET urges ACER to provide further details on what should be included in the written application from RRM and RISs. In addition, ACER should outline the criteria that will be used to assess the applications. This clarity is necessary to help ensure that applications can be submitted in accordance with the expectations of ACER and also to facilitate their timely evaluation. In particular, any technical specifications that RRM and RISs must adhere to need to be made clear at an early stage as this will impact decisions on whether firms would report directly or through a 3rd party RRM, and commercial offerings to the market.
2. EFET does not have strong views on this point.
3. Please see the comments above.

II. Questions concerning the draft RRM Guidelines

1. ISO 27001 aims at certifying generic information security management process and organization. This certification is not specific to the requirements and nature of the energy trading industry. Robust best practices for data management and security are already in operation in the energy industry as they underpin e.g. existing electronic confirmation processes and firms' own secure data management. As such, EFET does not believe that requiring ISO 27001 certification will add any additional value to the transaction reporting and transparency arrangements.

EFET is concerned however that ACER has yet to identify how security of data will be maintained within the trade repository. This is crucial as the repository will store commercially sensitive information on all relevant transactions. ACER needs to engage with the industry to develop a robust approach to its own data management security that recognises the sensitivity of the data it will be collecting, including how access to this is managed across the individual NRAs and other relevant regulatory authorities.

2. EFET does not understand why there is a simplified registration process for EMIR Trade Repositories. The more relevant distinction in registration requirements, as outlined above, should be between direct reporting RRM and 3rd party RRM.
3. ACER has not provided sufficient details on the RRM criteria for EFET to comment in detail. We would urge ACER to expand on the high level

requirements it has identified. For example, what does ACER envisage from “having back up facilities in place to offer and maintain a service at all times”? Does this mean that the RRM must have the actual capability to maintain multiple routes for reporting transactions to ACER at all times? Or should the RRM take reasonable measures to ensure it has the reporting capability to interact with ACER at all times? The requirement to have full back-up facilities translates into further costs, and accounts for no distinction between the different organizational requirements between market participants acting as RRM and 3rd party RRM. In addition, the requirement that “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” is not sufficiently clear, and could expose RRM to more stringent requirements triggering additional costs.

EFET urges ACER to consider the cost and implication requirements that result from its specifications.

4. EFET shares the view that once an RRM has met the ACER requirements, then there should be no additional obligation for it to secure an external audit report on whether it has met the criteria over the previous 12 months. This should be an issue between a commercial RRM service provider and any (existing or prospective) clients. A requirement to provide an audit report will inevitably add unnecessary cost. In addition, it should be recognized that if ACER decides that any audit requirement for RRM is necessary, it should not apply to directly reporting RRM, i.e. it would only be applicable to 3rd party RRM providing services to clients outside of its corporate Group.

III. Questions concerning the draft RIS Guidelines

1. Yes
2. ENTSO-E and ENSTO-G platforms should be treated as preferred data sources for transparency information. As these platforms are still under development and it is not clear at this stage whether they will be effective in providing a pan-EU transparency solution, ACER should ensure there is the option to allow market participants’ own transparency websites or national transparency platforms to provide the necessary data.
3. It could be possible for inside information platforms (or company’s own websites) to provide a data feed on information that is published, although further work is necessary to understand the technical specifications for how this could work in practice.

Additional comments on the REMIT ACER Guidelines for the registration of Registered Reporting Mechanisms

The reference to ‘the Agency will only register a RRM once **all** stages are successfully completed and demonstrable’ is ambiguous insofar as the treatment of an RRM in its pre-final approval stage is concerned and necessitates the requirement to fully define a transparent registration process.

The use of the ACER website as an official source for registered RRMs needs to be prescribed by the process, including all necessary documented and clearly defined interim steps in addition to the registration process itself. The use of the name of a person to represent a company is deemed to be inefficient in the instances whereby such company is active as an RRM (be it the market participant or a 3rd party service provider)

3. Application for registration as a Registered Reporting Mechanism

The fee details and structure are applicable to 3rd party RRMs only and guide the service conditions under due liability. In our opinion, this does not need to be reported to ACER or any NRA as it falls within the ambit of commercial discussion between the 3rd party RRM and its clients. The general principle, however, is that RRM should reduce the overall costs of reporting. The Agency’s high level review of business continuity and security policies’ is completely unnecessary if the applicable regulatory reporting processes are sufficiently specified from a technical IT perspective, including security and systems availability.

4.2 Validation of Input

This chapter needs to stipulate more operational process and technical details.

The term ‘significant’ needs to be well defined.

4.5 Validation of output

The ‘certainty’ as specified in this chapter needs to be based on a process description whereby technical reporting capability is guaranteed (e.g. delivery and process receipts). Chapters 4.7, 4.8 and 4.9 suggest that the RRM mechanism only applies to 3rd party service providers acting as RRMs. This is clearly in contradiction with the REMIT regulation, and needs to be aligned in terms of the process. A clear distinction needs to be made in the registration requirements for RRMs between those providing services to third parties and those established by market participants themselves for the purpose of reporting their own transactions and/or those of companies within their corporate Group. For RRMs established by market participants for reporting their own transactions the only requirement should be approval of the ability to communicate data to the ARIS information system/trade repository.

ACER should also maintain and make public a list of approved third party RRMs which will need to meet additional certification requirements such as data confidentiality and

segregation of reporting for its individual clients. This will provide assurance and orientation for market participants that any particular RRM in question has undergone authorisation procedure by ACER and is eligible to render reporting services.

5 On-going obligations and notification requirements need further technical specification and a set of clear definitions:

- 5.1** Required definition for the term ‘the **RRM requirements**’.
- 5.2** The definition of and process around the ‘**annual report**’ needs to be detailed.
- 5.5** The renewal procedure needs to be clarified and subjected to an appropriate process.

Additional comments on the REMIT ACER Guidelines for the registration of Regulated Information Services

1. Scope of application

‘(1) The platforms for the disclosure of information’ include the platforms of the market participants for this purpose and certified according to local NRA requirements for inside information

2. Registration Process

A fully detailed description is required for the written application and a two-stage registration process.

The fact that the technical specifications cannot be consulted upfront by market participants is not acceptable from a transparency perspective and prohibits an efficient and effective preparation of the implementation of the RIS criteria and processes. The pre-condition of the Agency only being able to register a RRM “once **both** stages are successfully completed” necessitates the requirement to fully define and establish transparent registration process.

The use of the ACER website as official source for registered RISs needs to be described by a process, including all necessary documented and clearly defined interim steps in addition to the registration process itself. The use of the name of a person to represent a company is deemed to be inefficient in the instances whereby such company is active as an RIS (be it a market participant or a 3rd party service provider)

3. Application for registration as a Regulated Information Service

The application specification provides no detail for the provisional registration phase.

It remains unclear how, on the basis of criteria outlined out in section 3, the certification scheme will evaluate the technical capabilities and qualifications of reporting parties and verify their compliance with them in order to pass a certified accreditation.

(1). Fulfillment of the technical requirements requires further clarification and precision for the following:

- **Sound** security mechanisms;
- **Adequate** resources;
- **Effective** check of transaction reports.

The requirement to submit ‘all additional documents, explanations and information the Agency requires’ is neither sufficiently detailed nor transparent enough, and may potentially lead to an unclear and flawed registration process with unpredictable outcome.

It is unacceptable that ‘the Agency does not accept any legal responsibility’. As stated above, the condition to have ‘sound’ quality and information security management in place, need to be applied to all parties involved in the regulatory reporting process, including regulators (ACER and NRAs or their 3rd party software and service providers).

The Agency’s high level review of business continuity and security policies’ is completely unnecessary if the applicable regulatory reporting processes are sufficiently specified from a technical IT perspective, including security and systems availability.

4. Criteria for registration as a Regulated Information Service

Criteria for registration need to be fully defined in a transparent manner.

Inside Information platforms shall be identified as such by market participants in the registration format. We understand hereby the market participants transparency websites which are defined and set-up for this purpose.

5. On-going obligations and notification requirements need further technical details and a well defined set of definitions.

Required definition for the term ‘the **Regulated Information Service requirements**’

The definition of and process around the ‘**annual report**’ needs to be further detailed.