

EUROGAS RESPONSE ON ACER REMIT GUIDELINES FOR THE REGISTRATION OF REGISTERED REPORTING MECHANISMS (RRMs) AND FOR THE REGISTRATION OF REGULATED INFORMATION SERVICES (RIS)**GENERAL REMARKS**

Eurogas welcomes ACER's public consultation on Guidelines for the Registration of RRMs and RIS which will have a crucial role to play for both operational and practical arrangements in reporting transactions and publishing inside information thus ensuring the effectiveness of REMIT, and believes this process will contribute to the definition of a conducive framework for setting up the necessary practical and operational arrangements for compliance in implementing REMIT transaction reporting requirements.

As a general remark Eurogas wishes to stress a very important aspect related to the to be defined reporting requirements, which is to be found, especially in the current economic and financial situation, in the need to avoid unnecessary burdens for market participants, as some operational and practical arrangements (from software to fees or changes in the operative procedures), could represent additional costs for companies, or trigger burdensome administrative procedures.

In such a perspective, due consideration should be given to those options that offer alternative, less expensive and equally effective solutions for companies, always with the aim of ensuring that a robust and reliable system for transaction reporting and data management is put in place.

Views that Eurogas has already shared with ACER, and which hold still true for this consultation, is that direct reporting to ACER should be allowed under the reporting framework, that an explicit safeguard system should be set for companies wishing to report via RRMs, should these RRMs be in default / fail to comply, and that lighter requirements should be set for market participants wishing to report directly to ACER, in comparison to those required for reporting to third party RRMs.

Eurogas attributes particular importance to these Guidelines, as they should also address two critical issues related to (i) the separate registration of market participants reporting transaction or publishing inside information on their own and (ii) the definition of clear legal and contractual guarantees for market participants vis-à-vis RRMs and RIS if they choose to delegate their obligations.

In its Recommendations of October 23rd 2012, ACER highlighted that market participants willing to report transactions to ACER should be registered as RRMs and/or RIS. Nevertheless, Eurogas current understanding is that the requirements of the proposed Guidelines can be applicable to all the operators planning to become RRMs or RIS regardless of the fact that they report transactions (i) only on their behalf or (ii) on behalf of other market participants.

For the reasons stated before, and with the aim of minimizing costs for companies and market participants should this option be more economically viable, a clear distinction should be drawn between (i) market participants reporting transactions and (ii) third parties who report transactions on behalf of market participants. Any market participant wishing to report directly to ACER should be allowed to do so. In this case a lighter certification process should be provided for "self-reporting" market participants, aiming at ensuring that their technical and organizational requirements are in full compliance with the rules defined by ACER for a safe, reliable and well-functioning transfer of data.

ACER itself proposed in the aforementioned Recommendations (n. 10) to keep separate registration of market participants from other companies acting as RIS for the reporting of regulated information. In our opinion, the same approach could apply to RRM_s, as the envisaged registration procedure seems to be excessively burdensome for market participants not handling third parties data. The same view was held in the "REMIT Technical Advice" issued by the EU Commission's consultants (PWC and Ponton), where a "Certified Self-Reporting Party" was envisaged for market participants wishing to report directly.

A very important aspect that Eurogas wishes to bring to ACER's attention is that the current formulation of the Guidelines does not fully address the issue of liability of RRM_s and RIS in case of (i) technical failure of their reporting systems, (ii) possible breaches of the security measures, (iii) reporting of erroneous transaction or data, (iv) non reporting or non-publication of transaction or data. As regards RRM_s, article 8(1) of REMIT clearly states that "*once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4 [among which are RRM_s and RIS], the reporting obligation on the market participant in question shall be considered to be fulfilled*". For these reasons, Eurogas believes that market participants should be able to rely on a clear contractual framework aimed at defining the responsibility of the service provider. The same reasoning should be applied to RIS, especially when they are required to report disaggregated data which are not made public on any platform.

Therefore, we think that ACER should carefully assess the ability of candidate RRM_s and RIS to provide the necessary legal and contractual guarantees to market participants, so that they can meet their reporting obligations upon receiving confirmation of a successful reception of information by RRM_s and RIS, while data security and integrity are adequately ensured. This is of utmost importance given that a penalty system is in place for market participants not meeting their reporting obligation.

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.**

Eurogas agrees with a two-steps registration process as envisaged by ACER. It is necessary that RRM_s and RIS comply with the organizational and technical requirements to ensure data confidentiality and system security. This primary check can be carried out through an accurate evaluation of the applications received by candidate RRM_s and RIS, with the possibility to require additional information when relevant. Full interoperability between RRM_s, RIS and ACER systems should be ensured, in order to transfer safely and effectively data to the Agency as from the official registration in the RRM_s and RIS list.

Nevertheless, the confidentiality of "Technical Specifications for RRM_s and RIS" as envisaged in these Guidelines does not seem to be adequately justified compared to the

advantages of the publication of these technical specifications in terms of transparency and possible improvements through the extensive assessment (and possible consultation) of interested stakeholders.

We understand that enough time is needed for ACER to assess the ability of candidate RRM s and RIS to provide reporting and publication services, and ensure adequate performance, reliability, safety and confidentiality standards.

Nevertheless, it would be useful to have a time-frame for the registration process set in the Guidelines, e.g. by defining the maximum duration of the application assessment phase, in order to avoid undefined extensions which may be detrimental to market participants willing to delegate reporting services.

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.

Eurogas shares the view expressed by PWC and Ponton, since only RRM s and RIS subject to the EU jurisdiction can provide the necessary guarantees for the provision of the reporting services under the conditions set out by REMIT and the subsequent implementation acts.

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

See general comments.

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?

The delegation of the transaction reporting obligation to RRM s will imply that market participants will report a significant amount of commercially sensitive information and/or information pertaining to trade secrets which will be potentially accessible to a large number of subjects (members of ACER and NRAs). For this reason, it is of paramount importance that market participants receive proper guarantees (legal, technical and organizational/procedural) regarding confidentiality of data reported and security of the IT system being developed by ACER and RRM s reporting transactions on behalf of market participants. Thus, the obligation for RRM s to have an ISO certification 27001 or similar is fully justified by the need to ensure a reliable information security management system.

We do not think that the same requirements should be imposed on self-reporting market participants.

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

The interoperability of the reporting systems established by ESMA for EMIR and ACER for REMIT is necessary to avoid possible double reporting and to ensure a cost-effective implementation and compliance under both EU Regulations. For this reason Eurogas welcomes ACER's proposal on a simplified RRM registration procedure for trade repositories registered under EMIR. The registration procedure envisaged by EMIR Technical Regulations¹ seems to be adequate to guarantee the organizational and operational reliability of Trade Repositories. We note on the other hand that ACER should verify their compatibility with the REMIT trading reporting system. Moreover we consider of utmost importance that Trade Repositories acting as RRMs provide the necessary aforementioned legal and contractual guarantees to ensure the market participants' compliance with REMIT obligation.

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

We generally agree with the RRM performance criteria proposed by ACER, even if most of them are justifiable only for operators providing reporting services to third parties. Self-reporting market participants should be subject to lighter examinations which should focus on the compatibility with ACER's technical system. There should be due regard also for confidentiality considerations.

We would also like to draw ACER's attention to some specific comments:

- **Back-up systems:** the Guidelines should provide further details on back-up facilities by defining specific requirements
- **Validation of input.** Although the function is already mentioned in point 1 (c) of the section 3 ("Application for registration as a RRMs"), we suggest the addition among the RRMs criteria of the quality check of the data received by market participants with the subsequent immediate request of re-transmission of erroneous data.
- **Validation of output.** RRMs should provide certainty to market participants also on the exact timing when the information is sent to ACER, in order to be fully accountable for the compliance with the reporting frequency as foreseen by the EU Commission in its implementing acts. If RRMs fail to comply with the timing, sanctions should be considered. Therefore, we suggest that the delivery receipt sent by the RRMs to market participants be accompanied by a time stamp. Market participants should be able to check the effective data and transaction reported by the chosen RRM.
- **Notifications of a breach of its security measures.** RRMs (or ACER) should immediately notify also market participants using their services, not only ACER, on possible breaches of their security measures which may cause unintended leakages or corruption of commercially sensitive information.

¹ In particular the Commission Delegated Regulation n. 150/2013 of 19 December 2012 "Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository".

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?

The operational reliability of RRMIs is of paramount importance to ensure the security of REMIT transaction reporting system and, consequently, the confidentiality and integrity of transactional data communicated on behalf of market participants. Therefore, the proposal to submit RRMIs annual report to an external auditor seems to be in line with the need to closely monitor the quality of the service provided.

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?

Eurogas generally agrees on the need to centralize the publication of inside and transparency information at national, regional and European level in order to guarantee the widest possible availability of information to market participants.

Nevertheless, we disagree on the need to report directly fundamental data or inside information to ACER, when such information is already published on publicly available websites. Direct reporting of inside information, on top of disclosure under article 4-(1) of REMIT, can imply significant additional costs for market participants or central platforms to develop information streams, albeit that already exist. For the reasons stated in the general remarks, this practice does not seem to be in line with the provision of article 8(5) which calls for the minimization of reporting obligations by collecting the required information from existing sources where possible.

Moreover, Eurogas wishes to underline that national transparency platforms for the publication of inside and transparency information have not been established in some European countries. In this particular case it is not clear whether market participants publishing inside and transparency information should be registered as RIS for direct reporting of fundamental data to ACER. As already highlighted in the general remarks a differentiated registration process should be envisaged for self-reporting market participants while the liabilities of RIS regarding the compliance of market participants on reporting obligations under REMIT should be clearly defined.

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?

We favour the establishment of centralized European transparency platforms by ENTSO-G and ENTSO-E as the most efficient tool to ensure the wide spread of data required according to the relevant European legislation. Since the ENTSOs, though only in the electricity sector so far, are required by law to make available all transparency data on a unique European platform, we agree on the opportunity for ACER to define on a bilateral basis the way information is made available. Nonetheless, it is worth repeating that direct reporting of publicly available information may impose undue burdens on market participants and platforms operators. Thus any arrangement proposed by ACER and the EU Commission should take due account of the costs imposed on the systems compared to the possible benefits in terms of market monitoring.

Those bilateral agreements should in any case be inspired by the procedural arrangement foreseen for RRM.

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

The use of web-feeds to report inside information to the Agency can contribute to reducing, though not set to zero, the additional costs imposed to information platforms for the direct reporting of inside information to ACER. The use of web-feed would probably avoid more burdensome transmission procedures which could imply an increase of the fees imposed on market participants for the provision of the platform services.

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?

Since confidentiality and integrity of sensitive data should be protected by adequate technical, operational and organizational arrangements, we deem it advisable to extend the requirements for RRM also to RIS reporting individual and non-aggregated information. This means that they should comply with the same criteria, obligations and notification requirements for RRM besides being integrated with the Agency's technology.