Electricity Association of

Ireland

ACER Public Consultation on REMIT records of transactions (PC_2012_R_10)

EAI Response

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EAI

Contents

The Electricity Association of Ireland is the trade association for the electricity industry on the island of Ireland, including generation, supply and distribution system operators. It is the local member of Eurelectric, the sector association representing the electricity industry at European level.

EAI aims to contribute to the development of a sustainable and competitive electricity market on the island of Ireland. We believe this will be achieved through cost-effective pricing and a stable investment environment.

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1 Introduction

EAI welcomes the opportunity to respond to the ACER Public Consultation Document (PC_2012_R_10) concerning "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" ("the Consultation"). While EAI has contributed to the Eurelectric response on the Consultation, EAI wishes to emphasize and add certain points which it believes should be recognised and taken into consideration by ACER before these Recommendations are finalised.

EAI understands the benefits and importance of and is a strong proponent of a transparent and competitive energy market. However, EAI strongly considers that measures adopted to further REMIT's overarching objective must be reasonable, proportionate and feasible from a cost and time perspective.

EAI believes that further clarity on these recommendations is required particularly with regard to the breadth of contracts/ transactions required to be reported. Furthermore, EAI believes that review of the extent of detail required on such transactions and the necessity for such detail in light of REMIT's overarching objective to allow for the monitoring of and prevention of potential market abuse is necessary. This is particularly the case for non-standardised transactions. EAI does not believe that extensive details on non-standardised contracts, derivatives or orders to trade adversely impact wholesale energy prices and in particular believes that much less detail for non-standardised contracts would be more appropriate. EAI would welcome clarification as to the expected contributions to the REMIT objective the breadth of reporting on such transactions would bring.

The Consultation also raises some confidentiality and cost concerns which this response discusses in further detail in Section 2 below. EAI believes that the final recommendations should appropriately balance the importance of achieving REMIT's objective while not incurring a disproportionate cost on market participants in striving for compliance, and that further liaison with industry on the actual contracts/ transactions to be reported and the detail thereon is required.

EAI's opinion on certain aspects of Questions in the Consultation is provided below.

2 Questions and Answers

Question 2: What are your views regarding the details to be included in the records of transactions as foreseen in Annex II? Do you agree that a distinction should be made between standardised and non-standardised contracts?

Standardised and Non-standardised contracts

Annex II provides for recording of transactions relating to standardised and non-standardised contracts. EAI requests further clarification as to the differentiation between "standardised" and "non-standardised" contracts. Examples of relevant "broker platforms" as well as what a "standard agreement" incorporates, would be very helpful.

From our understanding of what non-standardised contracts include (i.e. everything not covered by standardised contracts), EAI do not agree with the requirement to report on non-standardised contracts to the extent/ detail stipulated in Annex II. The Annex II.2 Fields should be significantly reduced to a standard that reflects the declaration of the existence of a non-standardised contract for transparency. Market participants should be obliged to maintain full details of such transactions in case of investigation or request by ACER/ NRAs however. Reporting on non-standardised contracts to the extent suggested in the Consultation raises issues of threats to confidentiality and competitiveness. Furthermore, the requirement for mandatory submission of a *pdf* version of non-standardised contracts also raises confidentiality issues and only the minimum amount of information necessary to identify trades that could hinder achievement of REMIT objectives should be required. We consider that this proposal is excessive; data sent in a common format are amenable to analysis, whereas copies of the contracts are not and contain information that is not relevant for the purpose of market monitoring.

Number of Fields to complete

EAI considers it very burdensome for companies to provide all the information for all 39 fields specified in Annex II of the Consultation for standardised trades let alone non-standardised trades. Data that would be difficult to gather without requiring significant extra time and personnel within companies and incurring cost to companies due to current systems not being equipped to cater for the 39 fields include for example: Aggressor trader name; Transaction Capture Time of the reporting party; Contract identification; Transaction ID, Linked transaction ID, Transaction type; Transaction Time; and Order Time stamps. New identifiers to trades and indications of which party initiated the trades will also require adaptation in many recording systems.

Furthermore, most recording systems collect the times trades are entered whereas exact times of completion are not recorded. Clarification is requested as to whether 'Trading Capacity' includes internal interbook trades as trade tickets are not so easily ascertainable for internal as compared to external trades.

EAI requests clarification as to whether market participants must complete each and every field noted in Annex II.1 particularly where the information is not readily ascertainable and would require costly changes to internal systems for compliance reasons. EAI believes for cost and burden minimisation reasons, market participants should be permitted to leave certain fields blank or record as "not ascertainable", fields for which information is not readily obtainable under their systems. Please see further, the answer to question six below.

Recording all changes

It is highly impractical to have to include all and any changes that occur to non-standardised contracts, especially in light of the potential for prices and quantities to change regularly. Changes that might occur during the day are often not recorded by companies. EAI believes therefore that where basic records of such contracts are required, end of day positions should suffice for REMIT purposes.

Cost

New systems and processes to capture all of the information, new tools to extract the information in the format that will ultimately be required as well as a validation of the extract before transferral of the information will be required to be developed by many companies. This implies a relatively costly initial development of such systems and processes for REMIT compliance plus an ongoing resource requirement (for example IT/personnel) to produce, validate, and submit reports. EAI request further liaison with industry as to the extent of the detail required of contracts, bearing in mind the cost and resource burden on market participants, before the fields specified in the Annex II are finalised.

Question 3: Do you agree with the proposed way forward to collect orders to trade from organised market places, i.e. energy exchanges and broker platforms? Do you think that the proposed fields in Annex II.1 will be sufficient to capture the specificities of orders, in particular as regards orders for auctions?

EAI requests clarification of the role that collecting information on orders to trade will play in achieving REMIT's objective. EAI believes that information on actual or physical trades entered is of more relevance and importance to REMIT objectives; the rationale for collecting this information should determine the reporting requirements on market participants. If the suggestion to collect orders to trade information proceeds however, EAI submits that orders to trade in *standardised contracts* only should be collected through organised market places but reiterates its concerns as to the level of detail as stipulated in the fields in Annex II.1 as noted above in answer 2.

Question 4: Do you agree with the proposed way forward concerning the collection of transactions in non standardised contracts? Please indicate your view on the proposed records of transactions as foreseen in Annex II.2, in particular on the fields considered mandatory.

Without further details on the distinction between standardised and non-standardised contracts reporting in the level of detail as stipulated on non-standardised contracts appears to be disproportionate to the objective of REMIT and should not be required to such an extent. Please see answer 2 for further details.

Question 5: Please indicate your views on the proposed collection of scheduling/nomination information. Should there be a separate Annex II.3 for the collection of scheduling/nomination data through TSOs or third parties delegated by TSOs?

EAI would welcome more detail on the level of scheduling/ nomination information foreseeable as reportable for REMIT purposes. However where this information is in the hands of the TSOs/ a TSO appointed third party, EAI believes that the burden on the market participant should be removed and transferred to the TSO/ delegated third party as soon as that entity receives the relevant information.

The details which the TSOs/ delegated third parties are required to submit should not go beyond that already available to such TSOs for burden and cost minimisation reasons.

Question 6: What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)? Which further wholesale energy products should be covered? Do you agree that the list of contracts in Annex III should be kept rather general? Do you agree that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places similar to ESMA's MiFID database? What are your views on the idea of developing a product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

EAI believes that the list of contracts is too general and proposes that the list of contracts to be reported on could be more specific as this would reduce the potential for uncertainty about whether a contract qualifies for reporting or not, lessening the potential for non-compliance by market participants.

The heavier burden of reporting on non-standard contracts needs to be taken into consideration. These contracts are much less used in the industry and reporting every single change to a wide variety of contract types (including when such changes are not final) for example, re-nominations, prices etc, would be particularly cumbersome and costly for companies that do not have suitable IT systems currently in place.

Furthermore, EAI agrees with excluding balancing contracts from reporting given the differences in balancing systems at national/ regional level in the initial phase.

In line with the answer to question 2 above, EAI believes that it would be efficient and achieve REMIT's objective if the Annex II reporting fields are applied to standardised contracts on TSO platforms/ organised market places only (i.e. only Annex II.1 should remain). If the requirement to report non-standardised transactions/ unique trades (which could including balancing trades) proceeds, market participants should only be obliged to report minimal information required for transparency purposes and/ or retain the information for availability on investigation or request by ACER.

Similarly, EAI submit that intra-group transactions should be excluded from regular reporting but that details of such be maintained by groups for availability on request or investigation by ACER/ NRAs.

Maintenance by ACER of an updated list of wholesale energy contracts admitted to trading on organised market places and thus reportable under REMIT would be very helpful for compliance purposes. Market participants should be permitted a reasonable amount of time to adapt to the list of contracts to report as it is updated.

EAI requires further information on ACER's suggestion of a phased approach of implementing the reporting of records of transactions under REMIT by making reporting of wholesale energy contracts "dependent from the time of recording in the ACER list"[1]. Does this mean that reporting of transactions is only necessary once the participant's name is recorded in the ACER list? What happens before the participant is recorded in the list, are participants exempt from reporting? EAI would certainly be in favour of a phased approach but more detail on how it would work and dependencies involved would be welcome.

[1] Page 15, s. 3.1.1

Question 7: Which of the three options listed above would you consider being the most appropriate concerning the *de minimis* threshold for the reporting of wholesale energy transactions? In case you consider a *de minimis* threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option B is an appropriate threshold for small producers? Please specify your reasons.

In general, EAI agrees with not defining a de minimus level as the obligation to report is already limited by definitions concerning products and contracts and if one does not fall within these definitions they should be exempt. Clarity over what 'acting individually' means and how it is determined whether a small energy producer is 'controlled by a company with reporting obligations' is however requested.

Furthermore NRAs should be permitted to retain discretion to exempt certain transactions which may take the specific characteristics of certain markets into account where their exemption does not frustrate the objectives of REMIT and is agreed with ACER. This might include markets (such as the Irish Single Electricity Market) which allow renewables benefitting from support schemes to act as price takers; by definition these participants cannot manipulate the market and excluding them from this requirement does not compromise REMIT's objectives.

Furthermore, EAI opines that consideration should be given to the fact that the burden of adopting/ updating new systems and processes may be a barrier to entry from a demand-side participant perspective. A proportionate approach to achieving the objectives of REMIT and maintaining, as well as enhancing, competition is necessary.

Question 8: Are there alternative options that could complement or replace the three listed above?

Please see answer 7.

Question 9: Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRMs?

It seems that reporting of information on standard contracts would most easily be done via RRMs. It should be mandatory for reporting channels to register with ACER as RRMs for consistency, simplicity and transparency purposes. The ACER registration fee should be nominal or nil. However, EAI requests clear details of how RRMs would be obliged to provide this service, how it might work and how fees could be controlled so as not to be overly burdensome on market participants from a cost perspective.

Please see further the answer to question 11 below but where market participants choose to do so, direct reporting by market participants should also be permitted via a simple standardised spreadsheet to be uploaded to an ACER platform. This should occur via electronic form.

The obligation on the market participant of reporting for REMIT should end once the information has been received by the RRM if that is the channel for reporting chosen by the market participant.

Question 10: Do you believe the Commission through the implementing acts or the Agency when registering RRMs should adopt one single standardised trade and process data format for different classes of data (pre-trade/execution/post-trade data) to facilitate reporting and to increase standardisation in the market? Should this issue be left to the Commission or to the Agency to define?

The format for reporting of information should be standardised for ease of reference and comparison but it should not be overly detailed or increase costs of implementation for market participants. However where a member state does not have an organised market place then the requirement for a standardised reporting system should not apply.

We would highlight that some member states may not have an organised market place or very active trading platforms for all of the contract types described, e.g. in Ireland there is no organised gas market place and electricity derivatives are not heavily traded on a trading platform. This means that the development of automatic reporting mechanisms will require proportionally greater investment and effort, therefore the option to report directly to ACER must be available. Unlike standard trades, there should be flexibility in the regularity and detail required in reporting of non-standardised trades to allow for such situations as experienced in Ireland.

The confidentiality of commercially sensitive information must be stringently protected in all steps of the process and adequate protection of such must be provided for so as to provide assurance to market participants.

Question 11: Do you agree that market participants should be eligible to become RRMs themselves if they fulfil the relevant organisational requirements?

EAI believes market participants should be in a position to act as RRMs themselves as this could be less costly than registering with an RRM. Importantly however a direct line should be left open for market participants to report contract information directly to ACER without having to act in the capacity of an RRM. As aforementioned, reporting by market participants should be permitted via a simple standardised spreadsheet.

Question 12: In your view, should a distinction be made between transactions in standardised and non-standardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?

Please also refer to the answer to question 2. EAI do not agree that the reporting of non-standardised contracts to the extent suggested should be required.

It should also be open to market participants to report *standardised* contracts as well as non-standardised contracts directly to ACER.

In terms of timelines, while certain information is available by close of business the day after a standardised transaction is entered all of the information may not have been confirmed by a relevant third party meaning that more changes would be forthcoming. Putting such a short deadline for submitting the information means that many potential changes could occur in the lifecycle of a contract before its completion, the reporting of which is complicated, time-consuming and burdensome for companies. The earliest time at which standardised contracts should be expected to be reported is one working day after entering into the transaction, but ideally at least two working days should be given in order that this reporting obligation can continuously be feasibly met.

EAI does not agree with the requirement to report the level of detail required of non-standard contracts. At least one month should be given to report less detailed/ more basic information than proposed in the Consultation for non-standardised contracts, which detail should relate to and be required primarily for declaration purposes.

Question 13: In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?

Further clarification of the benefits of reporting on derivatives in the context of REMIT objectives would be welcomed so as to inform the decision on what types of contracts are to be specified.

EAI strongly agrees that ACER and ESMA should cooperate closely and gather the data that is required by both from each other in so far as possible. This would minimise costs and burdens on market participants and avoid double reporting.

ACER proposes that when a substantial part of the information required under REMIT is not received in the EMIR database, the RRM must fully report all REMIT requirements. EAI requests further information on what is considered a 'substantial part' of REMIT information that would require full reporting by an RRM when certain information has already been submitted under EMIR requirements? Would this apply vice versa with regard to EMIR information?

Question 14: Do you agree with the proposed approach concerning reporting channels?

EAI agrees with the recommendation regarding the reporting channels and believes that they should be required to register with ACER for a nominal/ nil fee as an RRM while leaving a channel open for direct reporting by market participants, as discussed above in the answer to question 11.

Question 15: In your view, how much time would it take to implement the above-mentioned organisational requirements for reporting channels?

Until full details of the operation and cost of joining and reporting to an RRM are known, further constructive comment on this is difficult. Significant ongoing liaison with industry until this issue is finalised is necessary in order to ensure market participants have adequate time to prepare and comply.

Question 16: Do you agree with this approach of reporting inside and transparency information?

Firstly, the level of detail on what comprises inside information is lacking. EAI questions what else ACER envisages incorporates inside information beyond unplanned outage information?

On the transparency information, EAI request confirmation such data will be published as aggregated and also that the commercial sensitivity of non-aggregated data where applicable is stringently protected. Provision must be made for such.

We note that across Europe there are a number of platforms in place - managed by TSOs, market participants or exchanges - providing the publication of regulated information, and consider that these should satisfy the reporting requirement.

Whenever the information is already submitted to entities for operational and compliance reasons, then that entity should take the responsibility for ensuring it is transmitted to ACER, e.g. TSOs hold planned/ unplanned unavailability and generation output information. Furthermore, consideration should be given to entities that have information in their possession as a matter of operation (e.g. TSOs and aggregated wind forecasting). These entities should be required to transmit that information on behalf of market participants where it would be quite costly for the market participants to implement systems (e.g. wind forecasting programmes) to obtain and submit the information

themselves. Furthermore, using the wind forecasting example, it is unclear if forecasts for individual wind farms would be required? Forecasting systems are expensive and clarity would be necessary as to the level of accuracy in forecasting required.

EAI also suggest that the "alternative" of leaving a channel open for market participants to report the information itself should be regarded as a "second option" rather than an alternative.

EAI propose the reporting channel should be suitable for submitting "all" of the information not just "some" of it as the burden would be relatively the same.

Question 17: Please indicate your views on the proposed way forward on the collection of regulated information.

This information should be collected from existing sources where possible. Please see answers 13, 14 and 16.

Question 18: Do you agree with the proposed approach for the reporting of regulated information? Please indicate your view on the proposed mandatory reporting of regulated information through RISs and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

Inside information should be reported to national or regional platforms as agreed within Member States, e.g. TSOs. Transparency information should also be communicated to a central database/ body such as a TSO or Power Exchange. Where a market participant elects for a third party to report on its behalf, once the information has been received by such an entity (whether intentionally sent by Market Participants ("MPs") for REMIT compliance purposes or otherwise in the course of business), the MP's obligation to report must be considered to be satisfied.

EAI do not believe such reporting through RISs and transparency platforms should be mandatory. The option for MPs to choose to report the information directly themselves without registering as an RIS but complying with a certain minimal standard information format, should remain open.

Question 19: The recommendation does not foresee any threshold for the reporting of regulated information. Please indicate whether, and if so why, you consider a reporting threshold for regulated information necessary.

The same thresholds should apply to transparency and inside information. Depending on the final guidelines chosen to inform the type of transparency information required to be reported by MPs, where thresholds apply under such guidance, uniform application should apply to inside information. Furthermore, NRAs should be permitted to retain discretion as to thresholds required to report information provided that such do not frustrate the REMIT objectives and are agreed with ACER.

Question 20: What is your view on the proposed timing and form of reporting?

In terms of timing, being required to submit the information to ACER and the NRAs should be the responsibility of the RISs (unless market participants take the option of reporting the information directly themselves). Otherwise, this is akin to double reporting. Once the information is submitted to RISs or TSOs, those RISs/ TSOs should be required to submit it to the NRAs and ACER on behalf of market participants. EAI agree with reporting in electronic form.

3 Conclusion

In conclusion, EAI welcomes this opportunity to respond to ACER's Consultation on the records of wholesale energy market transactions.

EAI supports the objective for a transparent and competitive energy market. However, any recommendations put forward to further REMIT's overarching objective must be reasonable, proportionate and feasible from a cost and time perspective.

In this regard, EAI considers that a strong delineation between standardised and non-standardised transactions is necessary. Examples of both would be very welcome. Furthermore, while the reporting of standardised contracts should be in a standard format, consideration must be given to Member States that do not house the active trading platforms and/or organised market places envisaged in the Consultation. The requirement for standardised reporting systems should not apply in such situations and direct channels between ACER and market participants/ third parties should be available. In the latter case, reporting fields should not be as onerous as anticipated in Annex II.1 which would incur significant systems, processes and personnel costs on companies.

In terms of non-standardised trades, the extent of detail required under Annex II.2 is cumbersome and unnecessary and raises confidentiality issues. Market participants should only be obliged to report the minimum information necessary for monitoring purposes and/ or maintain full details of such transactions in case of investigation or request by ACER/ NRAs. Mandatory submission of a *pdf* version of such contracts is unacceptable given that the detail therein is above and beyond REMIT requirements.

With regard to reporting channels for contracts and inside or transparency information, market participants should have an either/ or option as to how they wish to report as between registering with an RRM/ RIS or reporting directly to ACER in a simplified format. Further details on the anticipated operation of RRMs/ RISs and control of their costs and fees would be welcome.

Where the information required to be reported is already received by an entity (e.g. availability information by TSOs or information by ESMA under European financial legislation), that entity should be obliged to report the information on behalf of the market participant to avoid double-reporting.

Further details on what information is deemed to constitute inside and transparency information is also requested in order that market participants can make an informed decision as to what constitutes such information and as to the potential cost and burden (e.g. operationally and system-wise) compliance might involve.

The protection of commercially sensitive information is critical. Full details on the level of detail of transactions anticipated to be published by ACER before a decision on such is made, is crucial to reassure market participants.

Finally, timelines for the reporting of contracts and inside or transparency information must be realistic and not overly burdensome taking into account different company processes and systems.

EAI urges ACER to take the above views into consideration before finalising its recommendations to the European Commission on these issues. EAI is available to discuss the above response at any time.