ACER consultation on Recommendations to the Commission as regards the records of the wholesale energy market transactions, including orders to trade, and as regard the implementing acts according to Article 8 of Regulation (EU) n°1227/2011

The EDF Group Response

July 31, 2012

Introduction

The EDF Group welcomes this ACER consultation on Recommendations to the Commission regarding the reporting requirements under REMIT. It is important that these recommendations meet the objective of providing the appropriate tools for ensuring the development of a robust European energy market monitoring regime without creating any undue burden on market participants. It is also important that the recommendations do not create confusion between transparency requirements under the Third Energy Package, REMIT obligations and competition enquiry requirements.

As a preliminary comment, EDF Group would like to let you know that we are particularly concerned that market participants will receive **guarantees regarding confidentially of data reported** (including the access arrangements for relevant NRAs) and the **security of the IT system** being developed by ACER. Indeed, market participants will report a significant amount of commercially sensitive information and/or information pertaining to trade secrets which will be accessible potentially to a large number of persons (members of ACER and NRAs) and requires a high level of protection. Before the implementing acts enter into force, market participants will need to know how ACER will ensure the confidentiality, integrity and protection of the information collected including the arrangements for accessing information held in the ACER database. EDF Group would be interested to know if a harmonized confidentiality corpus will be developed and become mandatory for all European NRAs and their staff.

The EDF Group supports the **exclusion of intra-group transactions and contracts** from the standardised reporting requirements to ACER. Intra-group transactions are not executed on the market and therefore are not capable of leading to potential insider trading or market manipulation or even affecting the market prices of wholesale energy products. Of course, any market transactions resulting from intra-group transactions will be reported as required and firms will keep records of intra-group transactions in the event of any investigations by NRAs. It is also worth noting that internal transactions may not all be electronically confirmed which would mean that they could not be reported according to the timeframes envisaged for market based standard transactions.

The EDF Group recognises that ESMA is still reviewing whether the reporting of intra-group transactions is necessary under EMIR. It should be noted that the purpose of REMIT and EMIR are very different: EMIR seeks to put in place arrangements in order to reduce the level of credit and systemic risks in derivative markets whereas REMIT focuses on transparency and prohibition of market abuse in physical power and gas

markets. As such, even if ESMA decides that intra-group transactions should be reported under EMIR there should be no presumption that similar arrangements should be put in place under REMIT as it would significantly increase the reporting burden with no additional value.

More generally, we support the **exclusion of non-standardised contracts** from the standardised reporting obligation. In particular, it is not appropriate for companies to report the full contracts for these non-standard transactions which are generally of a long and extremely complex nature as they encompass a large number of heterogeneous contractual elements (most notably in the case of Long Term Gas Contracts: delivery period, delivery point, logistics, price formulas, indexation, price review clause, etc.). Of course, these contracts are kept on record and are available to NRAs on request in the event of any investigation. In order to give comfort to NRAs and ACER that firms are not moving activity to non-standard transactions to avoid reporting, it is though proposed that companies report on a periodic basis (twice a year, for example) on the number of non-standard transactions entered into and the counterparts.

However, if ACER decides that some contractual information must be reported on non-standardised transactions, it is crucial that this remains limited to only basic prime economic terms that do not need to be updated (e.g. as option values change with prices). Moreover, an active involvement of NRAs shall be envisaged so as to avoid any potential double reporting where reporting obligations at national level are already in place.

Reporting all the steps of a transaction life risks increasing exponentially the amount of data ACER and NRAs have to deal with and would imply an extremely complex and not efficient monitoring process, given that changes can occur through the normal course of business before the transaction is finally settled . This life-cycle actually starts from the first order to trade to the final payment to or from the relevant counterparty. Various elements on the transaction can be altered over this period and if ACER requires the reporting of all changes, the only way to deliver this will be post settlement of the transaction. This will mean there can be no standard reporting timeframes as financial settlement periods vary for each transaction. In addition, trades can be altered post financial settlement, e.g. if trades are novated to a new counterpart and ACER needs to be clear that such amendments should also not be reported.

The EDF Group urges ACER to implement a 'one-shot' reporting requirement whereby companies report all of their standard transactions to the timescales envisaged and notify their relevant NRA of the number of trade amendments and novations every 6 months or so.

The definitions, references and formats for reporting appear to be taken largely from the financial markets and are not fully adapted to the energy sector. When an energy reference exists, it refers most of the time to the power business. Gas transactions (supply and transmission) have also to be considered. The EDF Group is of the opinion that market monitoring regarding the energy sector should not be built only by reference to the financial market as it was explained during the recent ACER workshop. Purpose of regulations and differences between markets should be further taken into account.

Draft Recommendations as regards Article 8 (1) of the Regulation

Question 1: Do you agree with the proposed definitions? If not, please indicate alternative proposals.

- The notion of transaction is defined as "*an agreement between two entities to exchange a wholesale energy product*". This definition is not precise enough and, if non-standardised contracts were to be reported, the scope of the reporting obligation regarding these contracts, notably contracts with sequential performance would be difficult to understand and assess. This notion needs at least to be illustrated with examples. In any case, the current definition of transaction seems too wide as it would capture every buy/sell operations including on places where there is no market (e.g. intra-group transactions) or where the commercial activity is made outside the market, such as regulated transactions.
- Further to the discussion during the workshop, the EDF Group would like to point out that the scope of regulated transactions is not limited to feed-in tariffs transactions. There are many other types of regulated transactions: transactions with customers, transactions with local suppliers, transactions on nuclear resources, etc. Some of the information could be known from the sole NRA (volume, counterpart ...). The EDF Group does not expect all these transactions to fall under the standardised reporting.
- The definition of "*Standard Contract*" refers to a "*standard agreement*", without any definition of that notion. The EDF Group suggests using "*contract admitted to trading at an organised market place and subject to a standard framework energy trading agreement. Balancing markets should be excluded entirely unless standardized arrangements reporting can be developed.*" as definition for "*Standard Contract*".
- Additional definition of "*wholesale energy products*" could be useful in order to identify transactions, contracts and market participants subject to REMIT obligations on transaction reporting, thus avoiding undue extensions.
- The definition of "*Derivative*" or "*derivative contract*" makes explicit reference to financial instruments as defined under MiFID Directive 2004/39/EC. As a MiFID review is ongoing, it is possible that the future definition of financial instrument undergoes changes and these changes could be substantial. The EDF Group therefore suggests to include reference to possible adjustments in the definition of financial instrument as a result of the outcome of MiFIR/D, with a view to avoid future inconsistency
- According to the definition included in Article 2 of REMIT, the status of "*market participants*" is related to the possibility to enter into transactions on one or more wholesale energy markets. Therefore, the clear identification of the relevant "*wholesale energy products*" is a fundamental condition to identify market participants subject to reporting obligation and also to publication of inside information, irrespective of their activities (e.g. asset operator, traders etc.)/legal status.
- Some ancillary activities carried out by asset operators, e.g. auctions for the procurement of "*cushion gas*" by storage system operators, may not fall under the definition of transactions in wholesale energy products if their structure, rules and functioning are strictly regulated, hence transparent and adequately published.

- Regarding the reporting of lifecycle information, we do not to understand what is meant by "*information on the contractual right for physical delivery which may include the use of optionality/flexibility at the agreed point in time after the execution*".
- REMIT does not give any timing information regarding the transactions to report as from the adoption of the implementing acts. What about transactions carried out within the frame of contracts entered into force prior the adoption of the implementing acts? In any case, we will welcome any recommendation regarding the avoidance of any form of retroactivity at the time the implementing act will be adopted.
- Finally, it is not clear if orders to trade and transactions coming/concluded from/with a party which is not a market participant must be reported and which counterparty ID code should be used in this case.

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? Do you agree with the proposal on the unique identifier for market participants?

The EDF Group agrees with the opportunity to make a distinction between standardised and non-standardised contracts, not least because we consider that non-standardised transactions should not be reported under the envisaged arrangements as highlighted above.

The EDF Group fully agrees with the opportunity to use a unique identification code assigned by ACER at the time of registration of market participants, provided that the interoperability of this identification code with the existing codes used for trading is ensured. The lists of codes used by each market participant should be publicly available. Our detailed comments on the reporting fields are set out in the table below.

- Comments on proposed transaction records given in Annex II.1 for standardised contracts:
  - It is unclear how the terms of floating price physical transactions will be represented;
  - It is unclear how the pricing terms of a swap will be represented (i.e. the calendar of fixings against the underlying, and any factor or spread);
  - For vanilla options, the following terms are missing: premium (amount or rate), strike price, expiry date or rule, option type (e.g. American, European, Asian);
  - We note that the record contains no information about the trade settlement terms and it is therefore unclear on how the terms of strips or their settlement events - e.g. an annual strip of monthly swaps, or an annual physical contract settling monthly should be reported;
  - We note that the record contains no information on the payment terms or payment due dates and it is unclear if payment events are to be reported;
  - We note that for vanilla derivatives, the payout convention is not explicitly stated e.g. for a fixed for floating swap, will the buyer pay fixed and receive floating? For a European option will the buyer pay the premium and receive the payout?
  - We do not support the reporting of trade life cycle events
  - As above we do not support the reporting of trade amendments although the scope of these will need to be defined in order for firms to report on the number of amendments as we propose above
  - We note that the Transaction ID (field 20.) can be of several different types and recommend the type is

captured explicitly (e.g. Exchange, Reporting Party etc). We suggest supporting capture of multiple transaction IDs (one per type) for a single transaction.

- We recommend that for Contract ID (field 14), ACER manages and publishes a mapping from its coding scheme to existing schemes and allows them to be used interchangeably by including a 'Contract ID Code Type' (e.g. so that Exchange codes can be used directly)
- What is required in case there is no existing ACER ID for the Contract ID (field 14) or Underlying ID (field 19) is not clear. If the 'name and characteristics' will be required in a standard script notation we would ask for this to be defined by ACER (including both the syntax and dictionary of terms). Due to the ambiguity and potential complexity of constructing these strings, we recommend any contract without an ACER ID is reported as non-standard, and a process defined by ACER so that non-standard trades can be reclassified as standard trades in the event an ACER ID is assigned post execution;
- We recommend that ACER defines, manages and publishes a reference list of codes for the fields listed below. As for the Party ID we recommend the code type is specified explicitly, and market codes are supported alongside any new codes defined by ACER:
  - Delivery Profile (field 15)
  - Delivery Point (field 16)
  - Quantity Unit (field 30)
  - Transaction Type (field 22): the annex does not clarify which fields are compulsory and which ones are optional; some fields would probably be meaningless for specific transactions (for ex. Fields 6, 7, 8 and 25 in the case of bilateral OTC transactions). Differentiating the transaction type could be useful.
- Originating Market and Destination Market (fields 36 and 37) – it is not clear what is required to be reported under this field.

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?

If orders to trade have to be reported, we agree with ACER that these should only be collected from organised market places which already store all this information.

As regards the proposed fields in Annex II.1, the EDF Group thinks that a further distinction should be made between information to be provided for orders to trades and information on actual transactions in standardised contracts. We also wish to underline some further comments on specific fields:

- Field n.6. In some organised venues, market participants submitting bids/offers are required to use a digital signature to close transactions and these signatures are often referred to the ultimate responsible of all trading activities. Thus, it could be difficult, not necessary useful and sometimes even not appropriate, for market venues to get information of the trader who initially took the initiative to propose a transaction.
- Field n. 20. In case of transactions in purely bilateral contracts, the obligation to assign a unique Transaction ID may impose to market participants further organizational efforts of little use for monitoring purposes. Therefore, this field should be left as optional.

- Field n. 22. The data required within this field seems to be inconsistent, since lifecycle information items (orders, confirmation etc.) are mixed up with contract type information (e.g. capacity trade, gas swing trade etc.).
- Field n. 23. This field seems to be redundant since the information could be included in the former one (n. 22 Transaction Type).

As regards auction markets, existing supervisory framework and regulatory obligations should be taken into account for the purpose of transaction reporting to ACER. In case of regulated markets (e.g. GME in Italy), it should be also considered that a modification of specific legislative/regulatory arrangements may be necessary in order to adapt current practices to the requirements of reporting under REMIT.

It should be also taken into account that in some markets (e.g. the Italian electricity market) buying and selling transactions related to standardised contracts are referred to specific injection and withdrawal points, therefore reporting this information could be useful for monitoring purposes.

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.

It is not appropriate for companies to report the full contracts for non-standard transactions which are generally of a long form nature. Of course, these contracts are kept on record and are available to NRAs on request in the event of any investigation. In order to give comfort to NRAs and ACER that companies are not moving activity to non-standard transactions to avoid reporting (which they would not do as by definition there is no liquidity in non-standardised transactions) it is proposed that companies report on a periodic basis (twice a year, for example) on the number of non-standard transactions entered into and the counterparts.

If ACER decides that some contractual information must be reported on non-standard transactions, it is crucial that this remains limited to only basic prime economic terms that do not need to be updated (e.g. as option values change with prices).

As such the proposed fields are too complex and too much inspired from electricity concepts and many items are not applicable to gas supply contracts or even less to gas transmission contracts. This format is no more adapted for most of the bilateral contracts: contracts with final customers, regulated contracts, industrial partnerships involving investment in assets and supply of energy, etc...

If some periodic reporting of basic information on non-standardised transactions is implemented then there needs to an appropriate frequency and EDF Group would recommend every 6 months.

Our comments on the proposed data fields are set out below in the table:

- Comments on proposed mandatory transaction records given in Annex II.2 for non-standardised contracts, should the Commission decides that they fall under the reporting requirements of REMIT:
  - We agree with the proposal that fields 1-8 defining the parties to the contract and field 17 defining the transaction date and time.
  - We recommend that **all** other mandatory fields are made optional:
  - We recommend that 'Buy /Sell' field 9 is optional as it is possible for non-standard financial contracts to be entered at zero upfront cost and for either party to move into the money. Therefore, although it may be possible to allocate a buyer / seller, this field will not always contain useful information for a non-standard contract.
  - We recommend that the 'Product Delivery Profile' (field 11) is optional as we expect that it will frequently be reported as 'Other' (e.g. on gas contracts, on shaped power profiles). We recommend against use of 'Other' and suggest it is left blank where it is not used;
  - We recommend that 'Delivery Point or Zone' (field 12) is optional as this is not meaningful for non-standard financial derivatives;
  - We recommend that 'Price Elements' (field 18) is optional as frequently non-standard contracts price off a basket of underlying indices (e.g. Long Term Gas Supply contracts pricing off baskets of oil indices) and are unclear how the field is to be used in these cases. In addition, we note that this field appears to be similar to 'Underlying Identification' (field 15). We recommend the purpose and usage are clarified.
  - We recommend that Quantity (field 19) and Quantity Unit (field 20) are optional as non-standard transactions may have more than 1 quantity e.g. a physical spark spread option would result in delivery of physical gas and supply of physical power of different volumes and units, a swing contract provides volumetric flexibility within a range. We recommend quantity is omitted where its definition is ambiguous.

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?

The EDF Group is not fully convinced that information concerning scheduling/nomination are necessary for market monitoring.

If these data were to be reported, the EDF Group agree with ACER's views on the reporting of scheduling/nomination information by TSOs or third parties delegated by TSOs, since they are better placed to provide this data and can in general play an important role in improving the transparency of the market. However, we would like to point out that transactions relating to nominations could be recorded by TSOs in an aggregated form per counterparts. Therefore, the available information would be, on one side, the nominations and, on the other side, the sum of the transactions making the identification of transactions from nominations impossible.

In any case, a separate Annex on information to be reported in relation to scheduling/nomination may be useful to achieve a minimum level of harmonization for the TSO reporting.

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?

The list of contracts included in Annex III is rather general and does not add much more details than the ones already provided by REMIT (Article 2). We agree with the need to keep this list general enough in order to accommodate possible future evolutions, nevertheless more clarity and detail should be provided by ACER not only on contracts but also on the wholesale energy products falling under the scope of REMIT. Given the wide definition of "transportation" included in this draft Recommendation which incorporates many different activities, more details are needed on commodity contracts listed in section B of Annex III.

The EDF Group interprets the following sentence "*except markets in which balancing is mandatory for all market participants*" as referred to markets where operators are subject to an obligation to offer all their available resources to the balancing mechanism. We are of the opinion that balancing markets should be excluded entirely unless standardised arrangements for reporting can be developed. Until standardized arrangements are introduced the collection of information by ACER and the relevant NRA should be carried out using existing market monitoring systems/transparency arrangements.

A list of wholesale energy contracts admitted to trading on organized markets and the development of standard products taxonomy could be a useful instrument especially in the first phase of implementation of the reporting obligations under REMIT. The reference to this list for the definition of the scope of reporting obligations would require a continuous update by ACER in order to capture possible evolution of contracts for wholesale energy products.

The case of OTC derivatives contracts should be clarified since they have to be reported under both REMIT and EMIR. Companies should not be subject to a double reporting of these transactions. There is no need to require a reporting of derivatives as defined by MiFID as these contracts are reported to trade repositories as foreseen by EMIR. ACER should have access to the derivatives' transactions with underlying gas and electricity commodities.

Draft Recommendations as regards Article 8(2) to (4) of the Regulation

As a preliminary comment, we welcome the definition of "*consumption capacity*". However, the EDF Group does not fully understand what "*relevant geographical markets*" means. We would have expected a reference to the "*relevant national market*" or "*relevant bidding zone market*".

Moreover, it is mentioned, on page 14, that the Agency is assigned with the task "*to collect and publish a set of information regarding all wholesale energy contracts admitted to trading on organized market places*" and then "*the list of contracts collected and published*". The nature of the information that will be published is today unclear. ACER needs to be precise in what it really intends to publish and why - is it to aid general transparency or for market monitoring purposes? In addition, it is crucial that no commercial information relating to such contracts is published. If ACER publishes such information it may indirectly disclose elements from the "*plan and strategy of trading*" of companies when these fall under an exclusion from REMIT disclosure requirements. If such information were to be published by ACER, the EDF Group urges ACER to ensure that no commercially sensible data will be disclosed as that could entail major competition issues.

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.

The EDF Group believes that ACER's approach in the definition of *de minimis* thresholds for transaction reporting limits this opportunity only to small electricity producers from renewable energy sources and is therefore too restrictive and not in line with REMIT. Article 8(2) of REMIT provides that the Commission shall draw up "*a list of contracts and derivatives, including order to trade and appropriate de minimis thresholds for the reporting where appropriate*". The EDF Group was expecting a threshold proposal regarding the transactions themselves – for example the identification of thresholds in terms of traded volumes per transaction, as a possible way to decrease the amount of data to be managed by NRAs and ACER without jeopardizing the effective monitoring of wholesale energy markets. The EDF Group was not expecting a threshold per market player as it was presented during the workshop. In any case, we do not consider the reference to financial regulation to be adapted for the energy sector.

Moreover, it seems to be suggested for the power business only. What about the gas business? We do not consider option C as being relevant: if the producer falls under the feed-in tariff but has a balance responsibility, it may impact the market.

The first option, i.e. a better understanding of the definitions of "*market participants subject to trading reporting*" and "*wholesale energy product*", should be further investigated and not only aimed at the exclusion of producers from RES. Other operators active in both electricity and gas markets (e.g. storage

operators under specific regulatory framework) may take advantage of this exemption, given the limited impacts they have on prices and other conditions on wholesale energy markets.

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

The definition of thresholds in terms of traded volumes for the reporting of transactions in electricity and gas markets should be investigated by ACER. The definition of these thresholds should be based on the number and the economic value of contracts dealt by each market participant rather than on the underlying commodity volumes.

The EDF Group understands that any *de minimis* threshold would apply only if the market participant does not trade at organised market places. As already mentioned, the EDF Group does not support the standardised reporting of non-standardised transactions. However, should the Commission intend to subject these transactions and notably intra-group and the regulated transactions to the reporting obligations, we would ask for the application of an exemption for these transactions which could eventually be formalized through the application of a threshold expressed in MW per contracts /transactions.

Question 9: Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRMs?
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?
Question 11: Do you agree that market participants should be eligible to become RRMs themselves if they fulfil the relevant organisational requirements?

In our opinion, market participants should be given the opportunity to report transactions in standardized contracts directly to ACER, if they wish to do so. At the same time, the EDF Group recognises that any entity reporting to ACER must be capable of doing so and be fully compliant with the relevant reporting format and communication standards. We therefore support the concept of establishing RRMs and welcome the clarification that individual market participants can chose to become RRMs for the purpose of reporting data to ACER rather than 'outsourcing' this to a third party RRM or putting in place a number of commercial arrangements with exchanges and brokers to report data on their behalf. However, it is crucial that ACER takes forward work now to clarify the process, timeframes, obligations and requirements for becoming an RRM. It is also crucial that ACER recognises an important distinction between RRMs that want to establish reporting services on behalf of 3rd parties and RRMs established by market participants for the sole purpose of reporting their own transactions (and possibly those of other Group entities) directly to ACER. The requirements and obligations on non-third party service RRMs should be minimised and only focused on the issue of establishing and confirming compliance with ACER's electronic communication protocols.

The EDF Group would also support the establishment of a public register on ACER's website of all third party service RRMs so that firms choosing to outsource reporting can be assured that the relevant RRM has been approved by ACER.

It is also crucial that ACER gives further thought to the framework on responsibilities and liabilities which are particularly relevant in case of possible failure in delivering the data by a third party service RRM or an exchange or broker. Companies should not be held liable for the failure of a third party service RRM/exchange/broker to report the required information to ACER where these have been approved by ACER.

The identification of a single trade and process data format may be an opportunity (as long as it does not simply turn into a single format with complex mechanism of different embedded options) since the submission of standard compliant data from different sources will ensure the compatibility and the suitability of all the information collected with the ACER trade repository. Nevertheless, in order to avoid excessive adaptation costs and efforts to be borne by market participants, the adoption of an existing standard already in use within the industry should be investigated; otherwise it would be difficult to ensure a quick standardization process.

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?

Given the considerable amount of data and the technical and economic challenge of such reporting for companies, the EDF Group believes that the transactions in standardized contracts should be reported not earlier than *end-of-next business day (i.e. D+1)* on a best endeavours basis with a maximum reporting *deadline of D+2*.

As regards transactions in non-standardised contracts, the EDF Group reiterates that these should only be kept at disposal of ACER and the competent NRAs. In any case, we believe that direct reporting to ACER should never be mandatory in systems where a reporting regime for non-standardized bilateral contracts is already in force (e.g. in the Italian electricity market). In these cases, existing trade repositories/organised market operators may act as RRMs also for non-standardized contracts.

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

The opportunity to harmonize the information required on derivatives to be reported under REMIT and EMIR should be investigated. However, as above mentioned, some reporting obligations should be clarified notably regarding OTC derivatives contracts to avoid any double reporting requirements for companies.

The EDF Group recommend (i) trade repositories (TR) which could provide data to the ACER as referred in Article 8(3)(II) of EMIR to be agreed as a registered reporting mechanism (RMM) under REMIT and (ii) financial and energy regulators to coordinate reporting obligations between themselves, so as to ensure good transmission of information concerning the non-financial energy companies.

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

The EDF Group agrees with the proposed approach concerning reporting channels subject to the comments above on the establishment of RRMs.

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

The EDF Group estimates up to 12 months provided ACER publishes sufficiently detailed and finalized processes, data and IT-related reporting specifications and the obligations and process for becoming an RRMs are made available as a matter of urgency. In addition, the amount of time and resource required to establish the reporting arrangements will be significantly impacted by key aspects of the framework that have yet to be finalized (detailed reporting fields for standardised transactions, extent of any trade lifecycle reporting, treatment of non-standard transactions etc).

Draft Recommendations as regards Article 8(5) and (6) of the Regulation

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

The EDF Group does not support as a principle the need to report fundamental data under the Third Energy Package or REMIT inside information directly to ACER notably in a context where centralised platforms (either at a national or regional level) will be set up (or in some cases already exist) to collate this information (cf. "*ACER discussion paper*" regarding the disclosure of inside information). Transparency data as well as inside information will then be accessible on a publically available website.

Companies should not be liable for a double direct reporting. When a national or regional publication (or information aggregation) platform exists, data should be reported to, or collected by ACER from this platform.

In the meantime, the EDF Group thinks that a distinction should be made between fundamental data collection for market monitoring purposes and the publication of inside information in real time. In fact, if national/European platforms, acting as RIS, are not in place the obligation to report inside information to ACER in real time alongside its publication on the company website risks imposing excessive burden to market participants. Moreover, there is currently no standard format / content of inside information being disclosed and there should not be one if we want all kind of events to be covered.

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

We agree with the necessity to identify RISs and existing transparency platforms for the provision of fundamental data as a way to avoid double reporting. However, the concept of RIS is today too vague to be workable at this stage and needs urgent clarification.

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 RIS and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

As already highlighted, the identification of RISs and transparency platforms as providers of fundamental data to ACER is a valuable solution to avoid double reporting. We also wish to stress that the final objective would be to have a unique European platform (at least one for electricity and one for gas) where all fundamental and REMIT data published by firms or published by TSOs or other national platform operators are made available for all parties (e.g. as required by the Draft Rules on Electricity Market Transparency) through the establishment of an EU wide information aggregation platform.

The EDF Group has significant concerns about whether a single EU wide publication platform (or even one each for gas and electricity) for all inside information can be established and provide the necessary guaranteed 24/7 service availability; instantaneous publication; standardised message formats without incurring an undue level of costs.

An alternative way forward is that any RIS is used as an information aggregation platform only - extracting data from national transparency platforms (and individual company websites) and pulling this all into one place - where it can be accessed by ACER, NRAs and market participants. While this would not initially deliver standard messages for disclosing inside information it would provide a level playing field and allow NRAs and ACER an easily accessible platform where all disclosures of inside information and fundamental data are gathered together (i.e. an EU wide aggregating messaging board but not a direct publication route of inside information for firms).

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.

Reporting/publication thresholds which are already defined by the relevant legislation concerning transparency (Regulation 715/2009 EC and 714/2009 EC) and the publication of inside information (e.g. 100 MW for the reporting of planned and unplanned outages of generation units) have to be taken in due consideration when identifying the reporting requirements under Article 8.5 of REMIT (i.e. the same data should be subject to both regimes).

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

Firms disclosing inside information will be primarily concerned that this has been published in real time to ensure no restrictions on traded activity. As explained above, the EDF Group recommends that any EU centralised platform is used as an inside information aggregation service provider rather than a direct route for firms to publish inside information (unless they choose to do so). The aggregation platform could automatically collect inside information disclosed on national platforms or company websites on a real time basis and present the information on a single website platform. The realisation of a unique platform at European level, simultaneously with a concrete streamlining of reporting requirements at national level, should be foresees in the long period.

ooOoo