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association of european energy exchanges

Response to the ACER Public Consultation:

"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"

&

Response to the discussion paper by ACER:

"Disclosure of inside information according to Article 4 (1) of Regulation (EU)
No 1227/2011 through platforms"

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I. Introduction

EUROPEX welcomes the opportunity to take part in the ACER consultation on the “REMIT transaction reporting”.

As the European Council at its meeting on 4 February 2011 reiterated the objective of the 3rd Energy Package to create a fully integrated energy market by 2014, we are confident that this can first and foremost be achieved for wholesale energy markets. Energy Exchanges are in this context some of the most visible results of the liberalisation of the energy markets in Europe. They offer trading platforms to generators, transmission system operators (TSO), importers, distributors, banks, traders, brokers, industries and large consumers buying and selling electricity, gas and emission allowances. The trading venues are optional and anonymous and accessible to all participants satisfying admission requirements. On the basis of being efficient market operators the main objective of Energy Exchanges is to ensure a transparent and reliable wholesale price formation mechanism.

With the entry into force of REMIT on 28 December 2011 a central cornerstone for the further improvement of the well-functioning of energy markets has been achieved. The success of REMIT now depends on its efficient and smooth implementation. Crucial in that respect is both the registration of market participants under REMIT as well as the reporting of transaction data to ACER and ESMA.

With the adoption of the REMIT registration format by ACER the focus now lies on the transaction reporting. Prior to this consultation PwC/Ponton has conducted a consultation to support the European Commission (DG Energy) with *drafting technical advice for the set-up of a data reporting framework for REMIT.* In this context, already some of the issues of the present consultation have been raised. Consequently, we take reference to some of the answers we provided in previous consultations.

Complementary to the consultation on transaction reporting ACER has released on the 18 July 2012 a discussion paper concerning the disclosure of inside information. Please find our considerations concerning this paper in our answer to question 16.

Overall the implementation of REMIT and specifically the setting up of the reporting infrastructure will lead to a high level of necessary investments and considerable efforts for all involved stakeholders, be it market participants, market platforms or ACER itself. The further development should therefore be moved forward with a keen sense of proportion in order to further improve energy trading while not risking disproportional burdens which could have a negative impact on the further development of the energy markets.

We look forward to further participating in the implementation process of REMIT.

Related EUROPEX responses to previous consultations:

1. Response to the ACER consultation: *REMIT Registration Format*, 21 May 2012
2. Response to the PwC/Ponton question list on: *REMIT - Technical Advice for setting up a data reporting framework*, 20 April 2012
3. Response to the DG Energy Public Consultation: *Enhanced data transparency on electricity market fundamentals*, 16 September 2011
4. Response to the ERGEG Public Consultation on "Draft advice on the regulatory oversight of Energy Exchanges", 29 July 2011

All responses can be found on the website of EUROPEX/Working Group on Transparency & Integrity (WGTI):

http://www.EUROPEX.org/index/pages/id_page-43/lang-en/

II. Answers to the Questions

Question 1

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

(1) First and foremost, due to the complexity and possible implications of including specific definitions in the implementing acts, EUROPEX deems a separate public consultation necessary to discuss the various definitions necessary to clarify Article 8 of REMIT.

(2) In line with comment (1), EUROPEX believes that such a consultation is also important to address whether some of the proposed definitions extend the scope of the implementing acts stipulated under Article 8(2) of REMIT.

(3) EUROPEX considers the general approach of a list of definitions to be helpful, if those definitions can provide further clarity to Article 8 of REMIT. Currently, there are some definitions which seem to us unclear, possibly unnecessary or missing. This concerns in particular:

a. Contract, Transaction, Trade and Agreement: The referred concepts do not clearly specify the different steps involved in the exchange of wholesale energy products and should be defined without any ambiguity.

b. The difference between Transaction and Trade.

c. Specific definition of Contract:

   i. How does the definition of “Contract” relate to the definitions of “Transaction”, “Trade” and “Agreement”?

   ii. Does the list of contracts in Annex III provide concrete example of the definition of a “Contract”?

d. The definition for “Organised Market Place” and consequently the definition for “Standardised Contract” are too narrow, and does not take into consideration the existing national regulatory framework. In some countries (e.g. Hungary) exchanges under national law are also set up as ‘organised electricity markets’ or ‘organised gas markets’). Such entities should be incorporated in the definition of “Organised Market Places”

   i. “Organised Market Places” should cover both brokers and exchanges.

e. Furthermore, the definition for “Organised Market Place” should fulfil certain criteria such as:

   i. A venue that brings together multiple third-party buying and selling interest in a system which result in a transaction

f. The definition of a “Standardised Contract” should be in-line with the updated definition of an ”Organised Market Place” and should take into consideration the following points:

   i. What is considered as standard agreement (EFET contract, etc.)?

   ii. Does a standardised contract imply clearing?

   iii. Is this definition in line with the proposed criteria for standardization by ESMA in its latest consultation paper?[1]

g. Non-standardised contracts: a clear definition and examples of what types of contracts fall under this category is necessary. Otherwise we see a risk that only marginal differences can be decisive whether a contract is presumed as standardised or non-standardised opening the space for regulatory arbitrage. Also the possibility that exchanges could principally offer the possibility of offering the trading with non-standardised contracts/ tailored contracts should be addressed.

(4) Why do the following terms have to be defined? Possibly they are not needed:

1. Bid and offer
2. Energy commodity or energy commodity contract
3. Agreement
4. Trade

(5) From our perspective the following definitions are missing:

1. Beneficiaries of the transactions – a definition that should be in line with the definition of transaction
2. Venue – In field 8 of Annex II.1 the term “venue” is mentioned without a definition for it.

[1] ESMA’s Consultation Paper on Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories. p. 70. “a. whether the contractual terms of the relevant class of OTC derivative contracts incorporate common legal documentation, including master netting agreements, definitions, standard terms and confirmations which set out contract specifications commonly used by counterparties; b. whether the operational processes of that relevant class of OTC derivative contracts are subject to automated post-trade processing and lifecycle events that are managed in a common manner to a timetable which is widely agreed among counterparties.”

(6) For accuracy purposes, we suggest:

1. Listing the definitions in alphabetical order.

2. When the terms are used according to their defined meaning, the first letters should be written in capital letters. This would avoid semantic confusion since in some sections of the document the correct meaning of a term is difficult to identify due to the ambiguity that arises from not knowing if it should be interpreted according to the definition or to some other meaning also associated to that word.

Question 2

What are your views regarding the details to be included in the records of transactions as foreseen in Annex II?

(7) Please consult the table below for EUROPEX's comments/views on the details to be included in the records of transactions as foreseen in Annex II.1:

Field No.	Field Identifier	Description	EUROPEX Comments
Parties to the contract			
1.	**Reporting time stamp**	Date and time of reporting.	Will this 'reporting time stamp' be generated by ACER? If yes, will the reporting party receive a confirmation upon submission? Or does the reporting party generate it on its own time stamp?
2.	**ID of market participant reporting the transaction**	Unique code of the market participant that reports the transaction.	The field identifier and description should not include information about who is reporting as this is addressed in Field 9. Therefore, the field identifier should only be, 'market participant who is part of the transaction' and irrespective of reporting entity.
3.	**Type of code used for identifying market participant reporting the transaction**	If a code different from the one allocated with the registration, indicate the type of code (EIC, BIC, GS1, LEI).	The elimination of this field could be achieved through a designated unique ID code (e.g. ACER generated code).

4.	**ID of the other market participant**	A unique code to identify the counterparty of the transaction by a unique code (see above).	In case of contracts closed on an auction type market on Energy Exchanges, the counterparty could be the Exchange or CCP. The same could apply to contract signed in continuous trading on exchanges where the counterparty is unknown (it is only known by the exchange/CCP).Therefore, is the market participant reports the transactions, who do they add as the counterpart? Is the CCP/trading venue as the counterpart? If exchanges report in the case of continuous trading what do they report in the case they provide the reporting service for some market participants and not for others (are there confidentiality issues)? For clarification reasons please note that central counter parties – (CCPs) are technically no 'market participants' as they only provide clearing and settlement services. Hence for reporting purposes, they should be given the choice if they would like to report on behalf of a third party (become a RRM) or not.
5.	**Type of code used for identifying the other market participant**	If a code different from the one allocated with the registration, indicate the type of code (EIC, BIC, GS1, LEI).	Cf. comments on Field 3.
6.	**Initiator Trader Username**	The username as identified at the venue of the natural individual who initiated the order or the internal username in case of bilateral transactions.	Initiator and Aggressor Usernames only exist in continuous markets and not in auction-like trading. How to guarantee the anonymity of people? If exchanges report on behalf (become a RRM), what should they report?,
7.	**Aggressor Trader Username**	The username as identified at the venue of the natural individual who aggressed the order or the internal username in case of bilateral transactions.	Cf. comment on Field 6.
8.	**Venue or broker ID/OTC**	In case the market participant used a market venue or broker to execute the transaction, this venue or broker shall be identified by an unique code.	Does the term 'market venue' imply an Energy Exchange? When will the codes for market venues and brokers, etc. be provided? Will there be an extra consultation before?
9.	**ID of the reporting party**	ID of the reporting party or a third reporting party.	Will "RRMs" be given a specific code and if so will it be used in this field?
10.	**Transaction Capture Time of the reporting party**	Date and Time for which the reporting party received the transaction from the source.	What is the added value of this information? If the market participant reported itself, this field would be identical to Field 24 ("Transaction time stamp"). The same would be true for a reporting Energy Exchange (organised market), which became a RRM. This could be different if there is a third party reporting who is not involved in the trading, but such a case seems unrealistic. And if it happened, there would be no need for this information – especially not for market monitoring purposes.

11.	**Trading capacity**	Identifies whether the transaction was executed on own account (on own behalf or behalf of a client) or for the account of, and on behalf of, a client.	In this case would it be simple proprietary trading versus agent trading? E.g when a member submits an order on the intraday it submits it either using the default setting which is "proprietary trading" hence "P" meaning trading for their own account or they can submit "A" for agent trading in which the member is trading for a client. This can be useful from a market surveillance perspective when verifying cross-trades to make sure the member is not buying and selling against itself
12.	**Beneficiary of the transaction**	If the beneficiary market participant of the transaction is not counterparty to this transaction it has to be identified by an unique code.	The definition of the beneficiary is necessary to better understand Field 12. EUROPEX, however, does neither see the difference between Field 11 and 12 nor the very purpose of the distinction.
13.	**Buy/sell indicator**	Identifies whether the transaction was a buy or sell for the reporting market participant.	This information can only be relevant for reporting of bilateral non-cleared transactions. Where reporting from a venue, the identification of which market participant is the buyer and seller of the transaction must be given.
Contract type			
14.	**Contract identification**	The contract shall be identified by using an unequivocally contract identifier established in the ACER list of contracts or if the contract in question does not have a unique identifier, the report must include the name of the instrument or, in the case of a derivative contract, the characteristics of the contract.	Does this refer to the list in Annex III?
15.	**Product delivery profile**	Identification of the delivery profile (baseload, peak, off-peak, block hours or other) which correspond to the delivery periods of a day.	Different definitions of peak/offpeak, block products are currently applied on different markets, so they should be defined and considered here, otherwise the only standard profile would be the baseload one.
16.	**Delivery point or zone**	Physical or virtual point where the delivery takes place.	In many cases (complex or synthetic products) it is not possible to assign a delivery point or zone (e.g. spreads).
17.	**Delivery Start Date and Time**	Start date and time of delivery.	How will this be reported in the case of special blocks which have two or more start/end times?
18.	**Delivery End Date and Time**	End date and time of delivery.	Cf. comment on Field 17.

19.	**Underlying identification**	In case of derivatives, the underlying shall be identified by using an unequivocally identifier for this underlying or, if the underlying in question does not have a unique identification code, the report must include the name of the instrument and the characteristics of the contract.	The same underlying, e.g. power delivery in area X, may have several identifiers by exchanges and/or brokers. How to deal with this? Must each trading venue report its own identifier?
Details on the transaction			
20.	**Transaction ID**	Unique identifier for a transaction as assigned by the trading platform of execution, or by the two market participants in case of purely bilateral contracts.	The definition does not take into account the difference between OTC and exchange trading. Additionally, one should distinguish between continuous trading and auctions. If one stays strictly to the principle that a trade on the exchange constitutes a double transaction (seller to CCP and CCP to buyer) then each exchange trade will have to be reported two times. It should be so because if the market participants report the transaction then they will use the same trade ID for the same trade generated by the trading system of the exchange. To be consequent, the exchange has to follow this logic. The bigger problem is to handle auctions appropriately.
21.	**Linked Transaction ID**	Where a transaction is linked to another transaction the referencing Transaction ID should be specified here. For example, the referencing Transaction of the Confirmation would be the ID of the underlying transaction as provided by the broker/exchange.	Unclear – EUROPEX does not understand the meaning of this field. This should include information where the transaction is matched in combination with other contracts, whereby giving market surveillance a understanding of possible off-price transactions.
22.	**Transaction Type**	Indicator that signifies whether a transaction is an initiating order, an aggressing trade, an option or some other transaction type, e.g. Confirmation, Novation (Swap), Broker Give Up, Join the Trade, Gas Swing Trade, Capacity Trade, etc.	• Unclear – very confusing concept. Mixes orders, product types, events (confirmation) etc.. Moreover, this does not fit at all to the definition of transaction. • This should be divided to two parts; whereby stating: o state type (give up, take up, transfers, etc) o transaction type (correction trade, novation, concern internal, etc • Does this mean that CCPs would also be involved in REMIT reporting?
23.	**Order Type**	Type of the order executed.	There are a huge number of order types. The categories should be defined in advance (e.g. fill-or-kill, all-or-non, iceberg, etc.).

24.	**Transaction time stamp**	The day and time the transaction was executed or modified.	This should be divided to several parts; whereby stating all relevant time stamps according to the processes of the deal.
25.	**Order time stamp**	The day and time the order was placed or modified.	The wording "placed or modified" is not clear. One order could be modified several times and it could also be deleted. How should these events be reported? The preliminary question is: what will be the basis of the reporting? Trades or orders? Which action will trigger an obligation for reporting? A trade? And will everything be linked to one trade? What about the placing (or the modification or cancellation) of an order? Must it be reported separately?
26.	**Time Identifier**	Indicating the time zone, expressed as coordinated time UTC.	
27.	**Unit Price**	Price indicating the value of the contract.	Unclear. What is exactly meant? The price indicating the *value* of the contract? What constitutes a value? Should this refer to the unit price, why is the value indicated?
28.	**Price Notation**	Indicates the currency in which the price is expressed.	
29.	**Quantity**	Where relevant the number of units of the wholesale energy product, or the number of contracts included in the transaction if applicable.	Unclear, but for the time being, EUROPEX understands this as transaction quantity.
30.	**Quantity Unit**	GJ, MWh referenced in Time unit quantity.	Should be given in MW, not MWh.
31.	**Cancelation flag**	An indication as to whether the transaction was cancelled, note this should include the withdrawal of orders from the market.	
32.	**Cleared / Uncleared**	An indication whether the transaction was cleared or not.	Can it also be relevant to auctions?
33.	**Option indicator**	Identification whether it is a buy or a sell option (i.e. call or put).	
34.	**Swap indicator**	Identification whether the transaction was a swap or not.	Obsolete, should be included in either field 21 or 22.
35.	**Derivative and its envisaged settlement type**	E.g. settlement type as envisaged at the time of the execution ("Physical" or "financial").	
36.	**Originating Market**	Identifies the originating market area concerned.	

37.	**Destination Market**	Identifies the market area where the delivery will take place.	
38.	**Intrasystem**	Where applicable the system used to transport between the seller's and buyer's system.	
39.	**Interconnection Point**	Identification of the border or border point of a transportation contract.	

Do you agree that a distinction should be made between standardised and non-standardised contracts?

(8) A clearer, more precise definition of what constitutes a "standardised contract" and a "non-standardised contract" seems to be necessary. In general,non-standardised contracts should be reported in the same way as standardised contracts to avoid regulatory arbitrage.

(9) With regard to the "Product delivery profile" in Field 11 of Annex II.2,, this concept raises many concerns. The possibility exists thathighly non-standardised product profilesfor general profile types as "peak" or "off-peak" are created

(10) A similar concern applies to Fields 13 and 14 of Annex II.2 related to "Delivery start date and time" and "Delivery end date and time" of non-standardised contracts. In case of non-standardised contracts, there could be days of non-delivery between the two terms which could hardly be handled through a standard profile.

(11) Fields 18 and 19 of Annex II.2 relating to "Price elements" and "Quantity" could hardly represent the changing values of price and quantity of the contracts during the delivery period in case of index-based pricing and/or optionality and flexibility included in the contracts, which is typically the case for non-standardised contracts. In these cases, a first problem arises from the required value (the ex-ante one or the ex- post one?) and the second one from the tracking of the respective changes.

(12) Field 21 referring to "Cleared/uncleared" could lead to ambiguities as the clearing option could be used several months after the contract signing. How to avoid the risk of double counting?

(13) In general it is not clear how the reporting of non-standardized contracts is envisioned, in case they include indexation or optionalities which changes the price/quantity profiles from the time of signing (ex ante) and the time of delivery (ex

post). The concerns raised in the previous points, about contract profiles with delivery periods longer than one hour could be overcome by transmitting the hourly information of the entire contract period. This may eventually translate into higher IT costs but would enable a clearer display of the required information. Such a solution could be expected at least for non-standardised contracts. A second option could be to virtually "cascade" longer contracts into hourly contracts.

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

(14) EUROPEX is in favour of one unique identifier, notably the ACER generated code for the following reasons:

1. As mentioned in its response to the consultation paper on the registration format, EUROPEX supports the ACER generated code (Option C) for transaction reporting as it would be simpler to have only one code..

2. It would avoid an extra administrative burden on Energy Exchanges in the case that they become a RRM and report on behalf of their members. In bullet point 4, under 2.5 of the consultation paper, ACER states that: "In case of any error detected by the Agency in the correspondence matching, the erroneous transactions will be rejected and sent back to the relevant market participant(s) or third party/parties reporting on its/their behalf and shall be rectified in due time; in case of persistence of errors, the market participant could be obliged to use only the ACER code for reporting transactions." Energy Exchanges would like to avoid this step, and strongly encourage the use of one code which could help prevent an extra administrative burden.

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?

(15) Generally the understanding of EUROPEX is that organised market places can only forward data to ACER if they are entitled to do so by:

1. Following the logic of the current consultation that they have chosen to become a RRM.

2. The market participants that trade on organised market places, have given the organised market place the authority to submit transaction data on their behalf.

(16) EUROPEX agrees with ACER that effective market surveillance can only be achieved with the monitoring of orders to trade. However, as mentioned in the PWC/Ponton questionnaire previously, due to the sheer size of the orders, this would mean that a large amount of data would need to be processed. Furthermore, concerning derivatives market this raises the question of coordination and harmonization between ESMA and ACER regarding reporting.

(17) The whole transaction lifecycle is relevant for gaining a comprehensive market understanding, and to effectively trace abusive behaviour. This includes orders to trade, unmatched orders, changed and deleted orders. However, all types of orders within the transaction lifecycle should be considered on a case-by-case basis. Hence, the same rules should apply to OTC and to Energy Exchanges in order to ensure a level playing field and to avoid regulatory arbitrage. Additionally, the information obtained by ACER from both OTC and Energy Exchanges should be harmonised.

(18) It is necessary to better define the individual 'order types' that ACER requests in Annex II.1 in, the present consultation paper.

(19) Accordingly, it is proposed that orders to trade are stored by the organised market place concerned (need a RRM status, see also answer to question 9) in order to be monitored by the market surveillance team and collected by ACER on a continuous basis from these organised market places. Does the term 'continuous' mean at the end of each working day? What will be the exact timeframe?

(20) Furthermore, under point 2.2 ("Reporting of transactions in standardised contracts") ACER states that "…, contrary to continuous markets, no harmonised supervisory framework applies at European level for the supervision of organised spot market places, *which is an additional reason why such orders to trade should be collected."* Besides the fact that spot markets also enhance continuous trading (e.g. intraday trading), EUROPEX does not share the argument that the non-existence of a harmonised supervisory framework would be an additional reason to collect orders to trade. For the overall understanding of the role played by Energy Exchanges in Europe it is important to note that main statutory differences exist due to special national legal regimes and economic conditions. This concerns in particular the profit or not for profit character of Energy Exchanges as well as the issue if they are made mandatory or not. This diversified structure, however, does not per se constitute an unsatisfying situation as Energy Exchanges operate already today efficient, well-

functioning and compatible markets across Europe (Cf. our response to the CEER consultation on "Energy Exchanges Oversight": http://www.europex.org/public/20110729-response-to-ergeg-consultation-on-draft-ergeg-advice-on-the-regulatory-oversight-of-energy-exchanges.pdf).

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?

(21) As mentioned in Part 1 of our response to Question 2, the 'order types' are not clearly enough defined. Hence, for the time being, we consider these fields to be insufficient.

(22) In addition, it is important to underline that specific auction types exist (e.g. clock auctions) which have their own order formats and should therefore be considered differently.

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.

(23) A clearer definition of non-standardised contracts is needed to answer this question appropriately.

(24) The same rules should apply to OTC and to Energy Exchanges in order to ensure a level playing field and to avoid regulatory arbitrage. Therefore, the information obtained by ACER from both OTC and Energy Exchanges should be harmonised.

(25) We observe that for non-standardised transactions reporting is done one month after the execution of the trade while in standardised contracts this happens on a daily basis. Generally, we think the all contract types should be reported with the same frequency in order to ensure sufficient and continuous market surveillance.

(26) The statement on page 20 of the consultation paper mentioning that "no later than the close of the following working day following the execution, modification or termination of the contracts" remains unclear about the question if the contracts

should be reported the day following the closing of the contract or the actual delivery of the energy. This would make an enormous difference in case of long term contracts (e.g. yearly contracts).

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?

(27) According to REMIT, non-cleared OTC bilateral transactions will have to be reported. Yet, the only way to confirm this information is through nomination data. This double-checking for transaction reporting helps assist the detection of market manipulation or fraudulent behaviour as the transaction reported to ACER should match the nomination data of the TSOs.

(28) If a separate Annex is to be defined, a consultation should be done with all relevant stakeholders.

(29) Given that TSOs are responsible for the reporting of nomination data, there should be a clear agreement between ACER and the TSOs on how they collect and report this data.

Question 6

What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)?

(30) In general, EUROPEX agrees with the list of contracts. Nevertheless, we believe that this list should strictly follow a bottom-up approach, meaning the close involvement of the relevant stakeholders, in order to avoid negative implications in terms of product innovation, etc..

(31) The exact implications of this list seems, for the time being, unclear

Which further wholesale energy products should be covered?

(32) It is crucial that the list must remain open for any new CONTRACTS.

(33) Generally we think that balancing markets should also be covered.

Do you agree that the list of contracts in Annex III should be kept rather general?

(34) EUROPEX agrees that the list of contracts in Annex III should be kept general as there are many sub-products with-in each contract type and as mentioned in Point 30, to avoid negative implication in terms of product innovation.

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?

(35) Such a list under no circumstances should lead to product discrimination or a "product control".

What are your views on the idea of developing product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

(36) EUROPEX is against ACER developing a list of contracts with specific product taxonomy for the use of reporting obligations as this would possibly imply a "product control" and could lead to product discrimination

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.

(37) EUROPEX is against de minimis thresholds for transactions on Energy Exchanges.

Question 8

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

(38) No answer

Question 9

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

(39) As a fundamental principle it is important to note that the ultimate responsibility of transaction reporting shall remain with the market participants according to article 8 (1) of REMIT.

(40) EUROPEX welcomes the idea of establishing *Registered Reporting Mechanisms (RRMs)*. This is in line with the response we gave to the PWC/Ponton consultation which concluded that *"one key element of transaction reporting is that a certain validation scheme is defined which the applying company has to pass in order to be eligible to report, containing e.g. security standards, IT requirements, etc."* RRMs, if they are set up in the right way, will ensure the quality of the data reporting.

(41) The RRM concept as such and all necessary requirements needed for their implementation should be part of a separate detailed analysis. Hence, please find in the below only some general remarks:

(42) Organised market places such as Energy Exchanges may decide to act as a third party reporting on behalf of the market participant (meaning: becoming a RRM as proposed in this consultation). Providing this service and becoming a RRM should always be based on a voluntarily commitment and should not be mandatory.

(43) EUROPEX welcomes that the consultation acknowledges that RRMs *"may charge a fee for the transmission of data on their behalf (meaning: market participants), notably when additional system investments are necessary"*.

(44) It should be within the responsibility of the RRM to decide what fees they charge for reporting data. As the market participant can always decide to report data on its own, organised market places being a RRM are under pressure to offer competitive fees. EUROPEX would like to point out that while general reporting requirements for becoming a RRM are necessary, these should not go as far as to

specify the exact set-up and reporting of a RRM. Different solutions for running a RRM should be possible. This flexibility will help to develop the most efficient and market friendly solutions.

(45) In general, we welcome the proposal that the consultation also foresees market participants themselves becoming RRMs as it reflects the principle of article 8 (1) of REMIT. In order to obtain a level-playing field, the requirements of becoming a RRM should be the same, not differentiating e.g. between organised market places and the reporting by market participants themselves.

(46) For an efficient implementation of RRMs we welcome the approach by the consultation *that existing standardised trade and process data formats and protocols for each class of data* are used. Whether this leads necessarily to a cost reduction as stated in the consultation has to be seen. Please note that the harmonisation of already existing reporting standards might also create costs.

(47) In order to avoid double reporting structures it is important that ACER and ESMA coordinate their approaches concerning the services foreseen for RRMs and trade repositories.

(48) EUROPEX would like to point out the risk of double reporting because of the fact that national data reporting mechanisms towards authorities already exist or are about to be created.

(49) For an efficient, easy and quick use of the collected data the way of access to RRM and trade repositories by competent authorities should be harmonised (e.g. procedures, security questions, IT requirements). Common access standards will also help to ensure the comparability of the data.

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?

(50) It is important that changes in the reporting standards are handled in an efficient way. Stakeholders should to be consulted in any case.

(51) The basic data format should be the same for all different classes of data.

(52) Standardised trade and process data formats are needed to ensure an efficient and smoothly reporting. Generally - according to Article 8 section 2 of REMIT – it seems to be the role of the Commission

Question 11

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

(53) The responsibility of reporting transactions shall remain at all times with the market participants according to article 8 (1) of REMIT. We therefore are clearly in favour of the proposal that the market participants themselves can also become a RRM (see also question 9) and report both standardised and non-standardised contracts ONLY for their own transaction data.

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?

(54) From our point of view there should be no difference between the handling of the reporting of standardised and non-standardised products.

(55) As mentioned before clear definitions are needed for standardised and non-standardised contracts.

(56) Basically the frequency for reporting of standardised and non-standardised contracts should be the same.

(57) A monthly reporting, however, does not seem to be sufficient. Such a delay would hinder efficient market monitoring, as key information might be lost during this time (e.g. “people might find it more difficult to remember what exactly happened”).

Question 13

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

(58) Beside ACER also ESMA – following the adoption of EMIR by the European Parliament – has published a consultation, seeking the view of stakeholders on proposed technical standards. EUROPEX is worried that the proposed approaches on reporting obligations might interfere with each other. One option in order to ensure both highly efficient and harmonised standards for EMIR and REMIT would be to develop a benchmarks scheme. Another idea could be that ACER and ESMA commit joint public consultations with respect to the elements of reporting on wholesale energy products.

(59) For the case that the collected data fall both under REMIT as well as EMIR reporting obligations the receiving authority – be it ACER or ESMA - should formally acknowledge upon the market participant that the reported data fulfil the obligation both under EMIR and REMIT. This is necessary to provide legal certainty for the involved parties and to avoid any ambiguity. As the European Commission is ultimately responsible for the drafting of the Implementing Act and the approval of the Draft Regulatory Technical Standards of ACER, and from the perspective of the *Better Regulation* aim of the European Commission, enhancing the quality of regulating and only regulate where there is a need to do so, a shared responsibility on DG Energy and DG Market on the one hand and on the other hand ACER and ESMA, to commit to draft any new regulation in line with the Better Regulation aims. As the reporting under REMIT, MiFID and EMIR is very complicated and burdensome for the market, there definitely rest an obligation on the EC to make this process as efficient as possible. EUROPEX calls upon ACER to take this principle into account as one of the starting points for its Advice to DG Energy on reporting obligations under REMIT.

(60) The issue of IT security should be high on the agenda. The planned databases will content an enormous amount of highly sensitive trading and fundamental data. The risk that due to security gaps these data are lost, stolen or unauthorized published should be under all circumstances be excluded. The more interfaces exist though the higher is the risk. For that reason, it is necessary to ensure that RRM are subject to strict operational, record-keeping, data management requirements and IT-standards.

Question 14

Do you agree with the proposed approach concerning reporting channels?

(61) We agree with the proposed reporting channels of organised markets, trade matching systems, trade reporting systems, other RRM, trade repositories, national financial market authority. As stated above, it should not be made mandatory to become a RRM.

(62) The ultimate responsibility of reporting rests upon the market participant. Although ACER suggests that a CCP or trading venue can be defined as market participant, EUROPEX rejects this reasoning as CCPs or trading venues can never be market participants.

(63) For clarification reasons please note that central counter parties - CCP- can never be considered "market participants" (this also seems to be indicated by footnote 7 / field 4 in Annex II 1). CCPs carry out two tasks: clearing and settlement of market transactions. As the responsibility to report rests upon market participants, please note that for third parties becoming a RRM this goes along with significant implications in respect to compliance liability aspects regarding the relation between the RRM and the market participant.

Question 15

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

(64) This is very difficult to answer and depends highly on the necessary coordination process between the reporting channels, the reporting companies and ACER.

(65) From experience we know that for the reporting companies the implementation of reporting processes should not be underestimated

Question 16

Do you agree with this approach of reporting inside information?

ADDITIONAL: EUROPEX opinion on ACER discussion paper, released 18 July 2012

(66) EUROPEX welcomes the concept of "Regulated Information Services – RIS". Energy Exchanges in general and existing platform specifically seem to be well suited to become a RIS.

(67) We understand that the term "regulated" concerns "information". The "service" to report "regulated information" shall not be regulated.

(68) From our perspective option B ("Nomination of regional or national inside information platforms by NRAs ins consultation with market participants") goes into the right direction. It shows similarities with the proposal we made in our response to the DG Energy public consultation on "Enhanced data transparency on electricity market fundamentals"(accessible under: http://www.europex.org/public/20110916-response-to-dg-energy-consultation-on-transparency.pdf) last year. A model that we called at that time: "One access, different platforms, same publication". With the proposal of RIS, this could be adopted as follows: "One access, different platforms, *same information, different publication*".

Explanation:

a. One access: a central webpage can ensure the access to different platforms via linkage.

b. Different platforms: Energy Exchanges/ existing platforms can be nominated to report insider information to ACER as well as to publish these – always on behalf of market participants. This is a quick and efficient solution to establish a comprehensive reporting and publication infrastructure in Europe.

c. Same information: By standardisation it is ensured that a common understanding of insider information is developed and reported.

d. Different publication: Due to regional differences, the publication (e.g. concerning power plant data: non- anonymously, per unit data versus aggregated, anonymously data) can differ from region to region in line with the relevant competition law (e.g. avoidance of collusive behaviour)

(69) We agree that transparency information should contain all data already being published under the transparency obligations of Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes.

(70) It is strongly advisable to produce (at least generic) information formats for insider information) and add these to the Implementing Acts. (e.g. time of decision, area and affected time periods should be included).

(71) RIS should be required to comply with general operational standards similar to those for RRMs. The standards for RIS shall be – as for RRMs – be harmonised. This is especially the case for security standards.

(72) In line with the possibility that RRMs *"may charge a fee for the transmission of data on their behalf (meaning: market participants), notably when additional system investments are necessary"* also RIS should be able to do so.

Question 17

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

(73) We consider RIS to be an appropriate way to guarantee data quality and data accessibility.

(74) EUROPEX – as already stated in the past – sees a potential conflict of interest if the future ENTSO-E platform in regards to the publication of insider information of power plant operators becomes a RIS. Due to the fact that Transmission System Operators (TSOs) are also in some Member States active energy trading participants for e.g. procuring balancing resources, they cannot be considered as information neutral parties with regard to the publication of fundamental data of power plant operators (or gas related information). Hence, we believe that ENTSO-E/G as an association should play an important but no exclusive role in the set-up of a one central access platform website. Importantly, a preferential access to fundamental data shall not be granted to any TSO under no circumstances as information discrimination should not be allowed for. A neutral platform operator will remove any suspicions market participants may have.

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?

(75) It is important to stress that there is a difference between making the reporting by market participants via RIS mandatory and obliging existing transparency platforms to report. The latter should not be obliged.

(76) As the consultation rightly states, TSOs are to be considered as market participants and are not in the right position to publish insider information (Cf. our response to Question 17).

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.

(77) Our understanding is that there should be no threshold for insider information.

Question 20

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

(78) Generally, we think that it is unnecessary for market participants to publish insider information on their own websites when it is already published on a central platform. (Principle of no double reporting.)

(79) The submission of insider information to the Agency once a day for the previous day should be sufficient for monitoring purposes.

(80) The idea to ask for instant reporting once new insider information is published seems over-bureaucratic to us, and would strongly drive up costs for market participants, platform operators and the Agency.