Eustream´s response to ACER´s public consultation on recommendations to the European 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 (REMIT)

Introduction

Response of eustream, a.s., the Slovak TSO as a market participant falling under the obligations of REMIT, including the reporting obligations, to ACER´s public consulation on reccomandation as regards the records of wholesale energy market transactions and as regards the implementing acts according to Article 8 of Regulation (EU) No 1227/2011 (REMIT).

Contact person: Lucia Matejková, regulatory specialist
E-mail: lucia.matejkova@eustream.sk
Tel.: +421 2 6250 7125, +421 905 612 963

Eustream´s response to the questions

Question 1

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

Eustream´s suggestion is to more precisely specify the definitions of standardised and non-standardised contracts in a way that there will be no doubts in their interpretation. Our understanding is that the standardised contracts should include those ones that can be processed automatically (fully automated contracts) due to the very short reporting deadline. We see as important to consider the EFET contracts as non-standardised since they may include non-standard clauses. 24-hour reporting might be difficult since the transactions under EFET contracts are not necessarily processed automatically.

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?

Eustream agrees with the distinction between the standardised and non-standardised contracts. But as in our response to question 1 we are of the opinion that there must be clarity by distinguishing between these two types of contracts and therefore we propose their better specification in order to avoid any uncertainty in their interpretation.

In Annex II.1 and II.2 we suggest to delete field No. 36. (No. 25.) Originating Market, 37. (26.) Destination Market, 38. (27.) Intrasystem as they go beyond the scope of the transactions and therefore seems to be redundant concerning their additional value to the reporting of the transactions, in Annex II.2 we suggest to delete field 29. Uploaded pdf of the

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contract. All information important for reporting will be already contained in the tables of Annex II.1 a II.2 (by fulfilling separate fields) and therefore there is no need to provide also a copy of such contracts.

Eustream supports already established EIC coding scheme as the unique identifier under REMIT for the identification of market participants. We are of the opinion that setting up the unique identifier should minimise the burden including the implementation costs and therefore it should be take into consideration that a huge amount of effort has been already done in producing EIC codes.

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?

We are of the opinion that orders to trade could be reported also via platform of individual TSO (as a market participant) directly to ACER or via European operators platform (e.g. ENTSOG platform) directly to ACER and thus the reporting through organized market places should be done only as one of the options of reporting and should not be mandatory for market participants.

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.

Please refer to the answer to question 2.

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 obligation of reporting data should stay with the owner of information. TSOs might not have available all information prescribed in this section and therefore will not be able to provide such information. TSOs should report the information only in case they are available to them. In case that the TSO will be obliged to report the information on behalf of another market participant, one of the issues which must be solved is whether the TSOs as a reporting subject will be responsible only for reporting obligation or also for the content of the information.

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

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obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

We suggest to delete from the sentence of the fifth paragraph within 3.1.1 List of contracts and derivatives to be reported (page 14) the following wording *"except markets in which balancing is mandatory for most market participants"*, which understanding is too vague and might potentially cause uncertainty by the implementation of this paragraph. The new sentence would then be "Although covered by the definition of wholesale energy product according to Article 2(4) of the Regulation and therefore subject to the monitoring of ACER and NRAs, it is currently proposed that contracts in balancing markets are not listed and therefore not collected by ACER under REMIT in an initial phase of reporting under REMIT, as balancing systems remain too different currently at national and/or regional level, but should be included in a later stage.

Question 7 and 8
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.

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

We believe that all market participants should be treated equally, including small energy producers. A threshold for reporting of transactions could lead to additional administrative burdens, with consequent additional costs. An additional threshold could also lead to a possible market abuse by splitting into separate transactions below a threshold. Therefore we propose no volume based threshold for reporting of transactions.

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

Reporting of transactions through organized markets, trade reporting systems, trade matching systems, trade repositories and other similar RRMs might be one of the tools for reporting but from our point of view it can be only a voluntary option and not mandatory; especially as such services might create additional costs. There should be an option for market participants to report the transactions in standardised contracts directly to ACER.

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?

This issue should be left to the Commission or ACER. Nevertheless it should be noticed that as it is stated in Recital 19 of the Reg. 1227/2011 the reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants.

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The reporting through RRMs should be done on voluntarily basis and there should be still an option for market participants to report their transactions directly to ACER.

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

All market participants may become a RRM, but only on voluntary basis.

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?

From our point of view the distinction between standardised and non-standardised contracts is not clear enough and should be more precisely specified in order to prevent any uncertainty by their interpretation. The reporting should limited to such data which can be automatically processed and allows reporting to be manageable and feasible to be reported in a reasonable time frame. Accordingly the short term reporting obligation (within 24 hours) for standardised contracts is to be seen critical as for the subject of a standard agreement (which fall under the definition of standardised contracts) may include non-standard clauses (e.g. EFET contracts). We see as important to consider the EFET contracts as non-standardised.

The reporting period of one month for non-standardised contracts seems to be long enough and should be reasonably shorten.

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

Eustream supports GIE´s opinion that the scope and detail of information to be provided under REMIT, EMIR or MIFID should be harmonised beforehand so that double reporting for one and the same transaction is avoided. The current proposal seems not sufficient to avoid double reporting as it would request the market participant to filter the information of one transaction through different kind of data reporting schemes, and at the end just report that part which is lacking. This creates massive administrative work.

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

RRMs could be used as an option for reporting trading information on behalf of market participants, not as an obligation. One option should be left for direct reporting of market participants to ACER.

Regarding security of data, we would like to highlight the importance of data security mechanisms on the side of ACER. Such mechanisms to ensure confidentiality have to be developed, tested and certified in advance to any reporting.

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

The establishment of a high quality system for reliable reporting channels should have a higher priority rather than a faster implementation.

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

Reporting of inside information and transparency information goes beyond the scope of Reg. 1227/2011 and Reg. 715/2009. Transparency information is already published on the websites of TSOs according to Reg. 715/2009. Furthermore ENTSOG transparency platform (originally developed for GIE) was also established and is based on information that is already published by individual TSOs on their websites on voluntary basis. An obligation for operators to forward this information to the NRA or ACER constitutes a double reporting. Furthermore all transparency data shall be also made available as of 1 October 2013 on one Union-wide central platform, established on a cost-efficient basis, from where they could be easily downloaded by regulators. Inside information that is available for infrastructure operators – referring to their assets and operations - is also published on their websites according to Reg. 715/2009. Thus additional reporting under REMIT is unnecessary and would establish a double reporting obligation, which is to be avoided. Another open issue raised by Eustream is why market participants have to report inside information both to NRA as well as ACER. Thirdly we propose more explanations of the terms "inside information", "regulated information" and "transparency information" since the existing explanation is too vague.

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

Eustream´s suggestion is to provide better clarification of the terms "inside information" and "regulated information". According to Reg. 1227/2011 market participants including TSOs shall publicly disclosure in an effective and timely manner inside information including information relevant to capacity, use of facilities for transmission of natural gas including planned or unplanned availability of these facilities. The publication of inside information, including in aggregated form, in accordance with Reg. 715/2009 constitutes simultaneous, complete and effective public disclosure and both NRA and ACER as other respective subjects can find the information easily at the websites of relevant market participants. In Reg. 1227/2011 it is clearly stated that the reporting obligation shall be minimised by collecting the required information from existing sources.

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?

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From Eustream's point of view all required information is already available on the websites of TSOs according to Reg. 715/2009. All data shall be also made available as of 1 October 2013 on one Union-wide central platform, established on a cost-efficient basis, from where they could be easily downloaded by ACER. Thus the reporting obligation under REMIT should be fulfilled. However, if reporting, as an alternative should be left to at least one reporting channel for reporting such information directly to ACER. Accordingly any kind of reporting platform (such as e.g. RIS) can be just on voluntary basis.

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.

There should be taken into consideration that TSOs have been already obliged by Reg. 715/2009 to publish market transparency related data without any threshold. A threshold for reporting such information would add unnecessary complexity and additional administrative burden, with consequent additional costs. Therefore we propose no threshold for reporting of regulated information.

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

We are of the opinion all required information is already available on the websites of the respective TSOs according to Reg. 715/2009 and Reg. 1227/2011. Thus the reporting obligation under REMIT is fulfilled. Any other reporting of such information goes beyond the scope of both legislative acts.

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