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

Public Consultation Document
Recommendations & Questions

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RESPONSE FROM GDF SUEZ SA

GDF SUEZ' comments and answers are included in *italic* below each Question

Recommendation and questions (Section 2.1 through 2.5)

Recommendation 1: The implementing acts should include crucial definitions for the data collection under REMIT in order to avoid ambiguity for the market participants subject to reporting obligations. Definitions which could be specified in the implementing acts include the notions of “transaction”, “agreement”, “contract”, “standardised contract”, “non-standardised contract”, “trade”, “tradable instrument”, “order to trade”, “bid and offer”, “execution”, “supply”, “transportation”, “market participant subject to reporting obligations”, “derivative”, “energy commodity”, “spot market” and “organised market place”. In addition, definitions common in the EU financial market legislation should be applied and notions newly introduced for the purposes of the implementing acts should be defined.

Recommendation 2: The records of transactions should distinguish between standardised and non-standardised contracts. They should include parties of the contract, contract type and details on the transaction according to Annexes II.1 and II.2. The unique identification of each market participant should be achieved either through the use of the “ACER code” for registration, through the use of one of the codes already existing and used for trading (EIC, BIC, GS1/GLN) or through the new international code currently under discussions (LEI), provided that the market participant has communicated at the time of registration (at least) one of these codes. Reporting of transactions in standardised contracts should include orders to trade in tradable instruments, which could be reported through organised market places. Both reporting of transactions in standardised and non-standardised contracts should include lifecycle information on the post-trade stage of a transaction, including confirmations, amendments, cancellations and information on the physical or financial settlement of the transaction. Information on the physical settlement of the transaction (“scheduling/nomination”) could be reported by TSOs or third parties delegated by TSOs.

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

1. *First, GDF SUEZ wishes to generally draw ACER’s attention to the fact that many of the definitions as given in Section 2.1 do not correspond to generally accepted ‘textbook’ definitions of some concepts, such as ‘Transaction’, ‘Agreement’, ‘Contract’. It is, for example, quite strange to find a (non-exhaustive) enumeration embedded into a definition (see ‘Agreement’).*
   Furthermore, as some of the stated definitions cross-reference each other, this may increase potential confusion and give rise to dispute.
   GDF SUEZ understands the need to describe or ‘define’ certain concepts for the purpose of later referencing into a given text or framework, but we would like to draw the attention to the narrow, limited applicability of the ‘definitions’ as given in section 2.1.
   <u>Suggestion</u>: ACER should either use generally accepted textbook definitions of some concepts and then illustrate these by referring to their application of this specific consultation text, whereby the ‘definition as currently stated in section 2.1 could serve as such illustration. Alternatively, ACER could explicitly put a disclaimer or qualifier at the start of the section, indicating that the ‘definitions’ as given are only for the purpose of clarifying the remainder of the text of this consultation, and in no way reflect generally accepted legal standards or definitions.

2. *Further along the previous point, GDF SUEZ wants to indicate that while the concepts ‘standardised contract’ and ‘non-standardised contract’ generally convey what the*

industry understands these to be currently, we all know that due to various regulatory initiatives (e.g. EMIR), there is a 'sliding scale' between these two categories and whereby there will be a tendency towards standardization. Hence the content of both concepts is highly likely to evolve over time, and yet many sections of the consultation make an important distinction (e.g. in reporting content, timing, channel, …) between both categories.
Suggestion: it will be important for ACER to monitor the evolution of this 'sliding scale', and keep all Market Participants informed (and to consult with them on a regular basis) as to its judgment to which category any tradable instrument belong, in order to avoid 'erroneous' reporting.

3. *GDF SUEZ considers the definition label 'Market participant subject to reporting obligations' as confusing and potentially misleading, as the label (maybe unintentionally) suggests that there are also Market Participants that are not subject to reporting obligations. Does this latter category exist[1]? In that case, it would be useful to provide also definition or an enumeration of such entities. Please also refer to our comments on option A under Question 7.*
   Furthermore, if the qualification "subject to reporting obligations" actually intends to include all market participants, it provides - for the first time – insight into the definition of a Market Participant under REMIT. Is this definition the same as the one to be provided in ACER's second Guidance, expected late August/early September ?
   Suggestion: in case the qualification "subject to reporting obligations" in the definition label offers no discriminative connotation with market participants that do not have reporting obligations, we suggest to shorten the definition label to "Market participant".

4. *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.*
   Suggestion: GDF SUEZ 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.

5. *The definition of 'Spot market' should be consistent with the definition of 'spot commodity contract' in MAR and also with the final MiFID provisions.*

6. *The definition of 'Organised market place' makes reference to MTF, but this concept of an MTF is not itself defined, nor is reference to MiFID given where this concept is in fact defined.*
   Suggestion: include the MiFID-relevant reference in the definition (with consideration for a possible adjustment under the new MiFIR/D).

7. *LNG is explicitly referred to in Section 2.1 under the proposed definition of 'transportation', both in the context of transportation stricto sensu, and as LNG storage and facility services. Also in the definition of 'Market participant subject to reporting obligations', reference is made to LNG in the context of LNG facility operators. However, in the Annex II and Annex III that contain detail of, respectively, the transaction records and the list of contracts to be reported, nu further reference is made to LNG. This may lead to confusion. See also our answers to Question 4 and Question 5.*
   Suggestion: GDF SUEZ suggest to clarify what specifically must be reported for LNG

[1] Other than potentially those entities that may fall below the reporting threshold as potentially implied under section 3.1.2 and the recommendations and questions of that section.

transactions, either by explicitly listing it or by making explicit reference to LNG when referring to natural gas (…."natural gas, including LNG"), where appropriate.

8. *With regard to the definition of 'Transportation' (which includes transmission and distribution), GDF SUEZ considers this 'transportation' concept as covering to many distinct activities, since it incorporates the LNG facility services and storages. Such overly large scope of activities falling under 'transportation' could interfere with the ultimate definition/clarification of 'market participant', as some gas and/or LNG-related businesses may or may not qualify as 'market participant'.*
   Suggestion: GDF SUEZ suggest to segregate transportation, storage, the provision of (LNG) terminal/storage services into separate definitions. Note however that such disentanglement may impact upon the sections and section headers in Annex III.

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?

1. *GDF SUEZ would like to draw the attention to the fact that generally, and irrespective of the standardised / non-standardised classification, all reporting of transaction data under REMIT should be proportional with, and restricted to the stated objective of REMIT i.e. allow monitoring of potential market abuse. In that context, we question the need for including a number of items such as - for example - those related to 'contract type' (e.g. items 15 through 19 in Annex II.1, and items 11 through 14 in Annex II.2).*

2. *With regard to the content of Annex II.1, GDF SUEZ considers as potentially error-prone the fact that transaction information items are mixed with orders information items. In case of orders to trade, items 23 and 25 are clearly needed, but at the same time make it impossible to identify a 'other market participant' (item 4); in case the record template does not contain 'logical checks' on information needed for transactions and on information needed for orders to trade, this will result in errors/omissions/contradictions.*
   Suggestion: segregate (standardized) transactions from orders to trade, and create another Annex II.1.a.

3. *In Annex II.1., item 7 refers to 'aggressor'. Please explain this concept.*

4. *In Annex II.1., item 34 refers to 'swap', whereby the swap concept is nowhere clearly defined in the document e.g. in the Definitions section 2.1. .*

5. *In Annex II,1., items 3, 5, 8 contain a conditional phrasing ("If …"); therefore the field cannot be set to 'mandatory'.*

6. *Item 15 of Annex II.1. refers to delivery profile of the supplied product. In case item 17 (start) and item 18 (stop) are indeed present, there seems to be no need for item 15. In fact it is questionable if item 15 serves any purpose at all under REMIT.*
   An analogue logic holds in Annex II.2 for items 13 and 14, relative to item 11.

7. *Item 35 of Annex II.1. refers to 'derivative'. As defined in Section 2.1 of the document, derivatives are financial instruments as defined under Regulation 2004/39/EC (MiFID). GDF SUEZ would consider it more appropriate, and certainly less prone to duplication and overlap, if such financial instruments were excluded from the scope of REMIT reporting obligations, to the extent that they are also reported under MiFID/EMIR.*

8. *It is appropriate to distinguish between standardized and non-standardized contracts to the extent that specific contract information is needed for each category.*

9. *A unique identifier for each market participant is appropriate. Moreover, it could be useful that in case the 'ACER code' is used (as opposed to the use of an existing code such as BIC, EIC, …)),such code is 'built' to reflect the Group structure, if any, to which the Market Participant belongs. For example, a number of digits could be reserved for Group identification.*

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?

GDF SUEZ concurs with the idea of assembling orders to trade through organized market places such as exchanges and broker platforms. We further refer to our second sub-answer regarding Question 2 above.
GDF SUEZ sees no a priori reasons to treat auction 'orders' different from 'regular orders to trade.

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.

1. *GDF SUEZ questions the need to upload the pdf file of the contract as indicated in item 29, given the fact that substantially all the relevant information has already been covered under items 1 through 28. Moreover, as changes to initial prices and quantities give rise to the recording of a new transaction – as indicated in section 2.3 of the document, the need to repetitively upload the (initial) contract creates unnecessary burden upon operational processes and systems capacity.*

2. *Item 21 of Annex II.2. makes reference to cleared/uncleared as a transaction characteristic. Is this a relevant item, as long as EMIR (incl. Implementing acts) has not been finalized ? And can a non-standardised transaction be (centrally) cleared at all (assuming that central clearing is implicitly referenced to by this item) ?*

3. *Item 23 refers to 'swap', whereby GDF SUEZ points out that the swap concept is nowhere clearly defined in the document e.g. in the Definitions section 2.1 .*

4. *Item 24 of Annex II.2. refers to 'derivative'. As defined in Section 2.1 of the document,*

derivatives are financial instruments as defined under Regulation 2004/39/EC (MiFID). GDF SUEZ would consider it more appropriate, and certainly less prone to duplication and overlap if such financial instruments were excluded from the scope of REMIT reporting obligations, to the extent that they are also reported under MiFID/EMIR.

5. *GDF SUEZ considers it unusual that for non-standardized transactions, no field is foreseen for 'price notation', as is the case with standardized contracts/order (item 28).*

6. *For non-standardized transactions (and potentially also for standardized transactions !), the header of the column 'Electricity or Gas' should be modified to read 'Electricity or Gas/LNG', in case LNG transactions fall within the scope of reporting obligations (cfr. our comment nr.6 to Question 1).*

7. *It is unclear to GDF SUEZ if the items 25 and 26 in annex II.2 should apply only to 'Transportation' … should LNG be referred to also ? (see also previous comment and comment nr.6 to Question 1)*

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?

GDF SUEZ believes that TSOs (or third parties delegated by TSOs) can indeed provide for an efficient data collection related to scheduling/nomination. It should however be made clear that in case TSOs or their delegated parties are effectively used as a collection channel, this absolves the other Market Participants from their own responsibility vis-à-vis ACER regarding this matter, on condition that Market Participants provide the TSOs with all necessary information that is in line with the rules governing such information feeding to fulfill scheduling/nomination activities; Market Participants cannot be held responsible for reporting delays or errors of any kind that result from TSO actions. In fact the same principle should hold for any third party, incl. Exchanges, MTFs, …that report 'on behalf of' other Market Participants.
GDF SUEZ concurs with the suggestion to include the needed information in a separate Annex II.3.

Additionally, GDF SUEZ is wondering to what extent special provisions must be made in the context of LNG, whereby terminal operators and vessel operators 'schedule' arrivals of vessels and 'schedule' the 'discharging' or 'loading' of vessels. Is ACER confident that its current section captures such activities in a complete and unambiguous way, in case there is a need to capture and report such information? Or are LNG terminal activities merely considered as a physical in-between phase between vessel storage and gas terminals, preceding the actual scheduling by natural gas SSO/TSOs into the gas pipeline network ?

Recommendation and questions (Section 3.1.1)

Recommendation 3: The Agency would propose to define the list of contracts to be reported pursuant to Article 8(2)(a) of the Regulation according to Annex III. At this stage, such list should not cover contracts in balancing markets, except markets in which balancing is mandatory for most market participants. Concerning derivatives, the list of financial instruments as set out in points (4) to (10) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of Regulation (EC) No 1287/2006 should apply. In addition,

the implementing acts could foresee that the Agency collects and publishes a set of information regarding all wholesale energy contracts admitted to trading at organised market places to increase transparency in wholesale energy markets and to facilitate data collection under REMIT, possibly in a phased approach.

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?

1. *Art. 8 of REMIT refers to wholesale energy products as including, sub(a,) the "contracts for the supply of natural gas and electricity with delivery in the Union". GDF SUEZ would appreciate explicit clarity about whether or not long-term supply contracts (for power, as well as for gas/LNG) are considered to be such contracts. In our opinion, such bilateral and highly customized contracts, and the actual execution of them over a long period of time, do not pose a risk of market abuse and therefore their monitoring serves no purpose under the stated objectives of REMIT. This remark is not only conceptual in nature, but also specifically refers to Annex III, Section A (6).*

2. *GDF SUEZ supports the idea of a fairly general, descriptive-by-characteristics list of contracts to be reported, as set out in Annex III, as well as the establishment and updating of a list of wholesale energy contracts that are admitted to trading on an organized market place, and the development of a product taxonomy and linking the reporting obligation to such list. GDF SUEZ would prefer that ACER periodically publishes the resultant list of reportable contracts and allows Market Participants a reasonable amount of time (e.g. 3 months) to make the necessary systems/process adjustments.*

3. *The reference to several specific time windows in Annex III, Section A (i.e. references to intraday, within-day, day-ahead, two-days-ahead, week-end and long-term) seems odd and unduly complicated. GDF SUEZ suggests to replace this by a single timeframe descriptive, e.g. "Contracts for the supply … that relates to any tradable time-window, ranging from intraday (electricity) and within-day (natural gas) through longer timeframes."*

4. *Further with regard to the content of Annex III, and particularly (but not necessarily restricted to) Sections A(7) and B(2), GDF SUEZ is wondering to what extend LNG is covered under the reportable contracts. Please also refer to our comment nr.6 to Question 1.*

Recommendation and questions (Section 3.1.2)

The Agency welcomes the views of the stakeholders on the above-mentioned options and will make its recommendations in the light of the responses received during the public consultation.

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.

GDF SUEZ does not believe option 'C', as phrased, is appropriate, because feed-in tariffs are not necessarily restricted (or may not be restricted in the future) to renewable energy sources only, and therefore the specificity of energy coming from renewable energy sources could give rise to discussion and even legal dispute based on discriminatory grounds. Moreover, as is also pointed out in the text, feed-in tariff regimes are quite different across the EU and loopholes may exist, or come into existence, that would undermine the transparency purpose of reporting obligations, EU-wide.

Refraining from defining any de minimis threshold as suggested under option 'A' appears to pose a disproportional burden upon some small market participants. We note also that the possibility, as suggested in the text, to have small participants' reporting done by third parties such as exchanges, is not consistent with the last sentence of the section 3.1.2 stating that : "In any case, any de minimis threshold should only apply if the market participant does not trade at organized market places."

On a side note to option A, GDF SUEZ has doubts in relation to Article 9.1. of REMIT that specifies the need to register as a Market Participant only if they enter into reportable transactions. In this Question 7, the possibility is introduced to exempt certain parties from reporting obligations, and therefore implicitly from registration obligations, due to a threshold application.
Registration will yield a unique identifier to anybody who is registered and this serves as a token for other Market Participants that at least some minimal checks by ACER and/or NRAs are performed on the registered party. Lacking registration for exempt actors in the market, how can a registered Market Participant establish that his counterpart is bona fide exempt, and is not a rogue market actor ?
GDF SUEZ believes this is an argument in favor of option A (i.e. no thresholds), unless it is explicitly recognized that registration is a pre-condition to transact (as opposed to linking registration to reporting transactions)

Option 'B', whereby a specific threshold is set, appears to be the most clear and simple solution, and therefore appeals to GDF SUEZ intuitively, even though the level of 2 MW is really very low (a single windmill will put you over the 2 MW threshold)… 20 or 25 MW seems more appropriate (note that in several EU countries biomass power plants with a capacity < 20 MW are also exempt from reporting and controls with regard to other laws).
We would like to remark that whatever the final nominal number will be, in the context of transactions reporting, volumes are the relevant dimension so that MWh is a better yardstick than MW, which typically refers to the capacity dimension (and is used for publication of unavailable capacity).

GDF SUEZ notes that ACER's consultation text contains no de minimis thresholds for gas

(and LNG), and would advise to include also such (volumetric) thresholds, provided that they are sufficiently high, so as to be appropriate and serving the final purpose of REMIT.

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

*GDF SUEZ could envisage an exemption for a combination of modified option B and modified option C which could imply that persons with a production capacity (as defined in current option B) below 20 (or 25) MW (but better: a volumetric threshold, not capacity-related, cfr. our comment sub Question 6., option B), **or** selling exclusively under feed-in or regulated tariffs (without added payment of any form and to be elaborated further to close loopholes) are exempt from reporting obligations (and hence automatically must also not register as market participants under REMIT … but note our comments supra under Option A for Question 6).*

Note that this refers to electricity. For gas/LNG no alternative can be formulated as the current ACER text contains no proposal.

Recommendation and questions (Section 3.2)

Recommendation 4: The Agency currently considers that records of transactions, including orders to trade, in standardised contracts should be reported through RRMs to the Agency. Any organisation (e.g. organised market places, trade repositories, TSOs, trade matching or trade reporting systems) or market participants themselves should be eligible to become a RRM under REMIT, subject to conformity with organisational requirements which should be set on a harmonised basis, possibly including the use of existing standardised trade and process data formats and protocols for each class of data. Whilst reporting of derivatives is already mandatory for trade repositories under EMIR, reporting through organised market places and TSOs or third parties on their behalf could be made mandatory as well, at least for some classes of data (e.g. orders to trade from organised market places and scheduling/nomination through TSOs or third parties on their behalf). Records of transactions in non-standardised contracts should be reported directly to the Agency.

Recommendation and questions (Section 3.3)

Recommendation 5: Records of transactions, including orders to trade, in standardised contracts should be reported as quickly as possible, and no later than the working day following the execution, modification or termination of the transaction, or the placing of orders to trade. Records of transactions in non-standardised contracts should be reported within one month following the execution of the transaction. The records of transactions should be made in an electronic form.

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

GDF SUEZ believes in a multi-channel approach and believes the possibility should remain open for all market participants to directly report standardized transactions/contracts to ACER.

The channel choice that individual market participants should be able to make can be based upon costs, operational aspects and desirability of control over reporting processes, as well as faith and comfort related to the workings of RRMs, especially those that are not organized markets.
That being said, GDF SUEZ strongly believes in maximum standardization of the process/format of data reporting, regardless of the channel used for actual reporting. In fact, large players like GDF SUEZ may serve as virtual, 'internal Group' RRM for all or part of its EU reporting obligations under REMIT - except where legal/regulatory obstacles would prevent such internal Group centralization - and in such context maximum standardization, also internally, is a necessity.
In case efficient standardization of process/format can be achieved (see Question 10 hereunder), the added value of RRMs in the reporting chain must be judged upon their merits, but RRMs should not be imposed as the sole channel.

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?

As indicated in our answer supra (Question 9), GDF SUEZ strongly supports the drive towards standardization of process/format to facilitate reporting. We believe that standards should be adopted through the Agency, based on close consultation with market participants.

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

GDF SUEZ believes that market participants should indeed be eligible to become registered RRMs. As this is a possibility, not an obligation, there is no a priori reason to exclude them. The precise conditions for licensing and operating will define the 'appetite' for market participants to embark on becoming an RRM.

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?

Reporting of non-standardised transactions through RRMs (of any kind) appears to be overly complex and burdensome, and GDF SUEZ believes this responsibility of reporting such non-standardised transactions to ACER lies with each market participant.
Reporting of non-standardized transactions within one month is not always feasible in view of the often complex internal set-up of large energy companies, and we would propose a two-month window.
Also, with regard to non-standardized transactions, clarification would be appreciated about precisely what determines 'execution' … is this 'signature date', 'first transaction date' (in case of a repetitive series), 'effective start date' of the contract' … ?

Recommendation and questions (Section 3.4)

Recommendation 6: Trade repositories under EMIR should report records of transactions in derivatives collected and maintained under EMIR to the Agency. The Agency and ESMA will cooperate closely concerning the data collection of derivatives to be reported under REMIT, EMIR or MiFID. Where a substantial part of the REMIT data requirements is not met under EMIR or MiFID, RRMs should be required to report the complete data set directly to the Agency.

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

GDF SUEZ agrees with the proposed approach. The avoidance of double reporting must be a key driver in the design and implementation of the overall regulatory framework into which energy firms are scoped. Please also consider our response to Question 17 in this regard. In that context it is not clear to GDF SUEZ why the scheme on page 22 of the Consultation Document indicates that 'Trade Repositories' would have to report to ACER and also to ESMA, as there is a bi-directional data exchange arrow between ACER and ESMA. This appears inconsistent with the principle of avoiding duplicate data exchanges.

Recommendation and questions (Section 3.5)

Recommendation 7: The implementing acts should require reporting channels to register with the Agency as RRMs on a mandatory or voluntary basis and define organisational requirements for RRMs (e.g. adequate policies and arrangements to report the information in a timely manner, effective administrative arrangements designed to prevent conflicts of interests with clients, operation and maintenance of sound security mechanisms to guarantee the security of the means of transfer of information, minimise the risk of data corruption and unauthorised access prevent information leakage, maintenance of adequate resources and back-up facilities, systems in place that can effectively check transaction reports for completeness, identify omissions and obvious errors and request re-transmission of any erroneous or missing reports).

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

GDF SUEZ agrees with the proposed approach, including the broadly defined organizational requirements for RRMs, but refers to its answer under Question 10 whereby it was indicated that market participants should not be obliged to become RRM and retain a fundamental choice to report directly to ACER on standardized transactions.
Moreover, GDF SUEZ believes that RRMs should be obliged to register; a voluntary registration offers no safeguards to Market participants and implies a risk of two 'classes' of RRMs, adding to confusion.

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

GDF SUEZ believes the adequate set-up of robust RRMs will take approximately one year.

Recommendation and questions (Section 4.1)

Recommendation 8: Information to be reported according to Article 8(5) of the Regulation should include inside information and transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes. The information shall be provided as individual non anonymous data.

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

Regarding the reporting of inside information, GDF SUEZ understand the need for the Agency and NRAs to receive all inside information, regardless of whether this was published on the company website, or has been delayed or not published in accordance with the Articles 3(4)(b) or 4(2). However, we point out that the vast majority of the published information goes either via corporate websites or via TSO/SSO/LNG Terminal Operators (under 714/2009 or 715/2009), so the Agency's approach implies dual information streams to ACER and NRAs (who have the capacity to consult corporate websites as well as those of TSOs/SSOs/LNG Terminal Operators). It is feared that reporting of inside information, on top of publication, will imply additional costs for market participants to develop an information stream that already exists, albeit in a dispersed way (from ACER viewpoint).
In this context GDF SUEZ wants to point out that lacking any publication initiative on a national or European scale, market participants have been under pressure to come up with an appropriate publishing forum for their inside information and the obvious response of using a (purposely built) corporate transparency website, in combination with using existing channels such as TSO websites, was the only available choice in order to meet the imposed deadline (December 28, 2011). Consequently, substantial efforts and money have been put into this solution. GDF SUEZ notes that RIS, as referred to in section 4.2.1 are not yet operation on the energy scene, and their role at this time is purely hypothetical.
It should therefore be investigated whether the information stream relating to the publication of inside information cannot be automatically captured/converted by ACER/NRAs as reporting of inside information, in order to avoid the need for monitoring (and 'searching') of each company and TSO website.

With regard to the 'Transparency Information' as reported via 714/2009 and 715/2009, we would like to point out that there are very good reasons why this information is published on a aggregate basis, and such reasons do not only relate to confidentiality but also to market relevancy, especially in the case of gas. While we are aware that the purpose of ACER's monitoring of possible market abuse by individual persons is different from the publication purpose by TSOs/SSOs under the 714/2009 and 715/2009 regulations, the ACER obligations, as written, will in fact duplicate the existing information streams of operators under these two regulation, unless ACER collects the 'raw data', as provided by the asset operators, directly from these SOs.

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

Regulated information is already published via TSO/SSO/LNG terminal forums (in aggregated form or not) and therefore is made available by market participants to TSOs/SSO/LNG Terminals in the context of 714/2009 and 715/2009. Moreover, much regulated information is also made available to NRAs. GDF SUEZ is very concerned about multiple and substantially (but not totally) overlapping information streams to all these parties. The resulting overall operational burden, and the associated costs are heavy, and every reporting initiative adds one more layer to this.

As Art. 8.5 of the Regulation stipulates this information should preferably be collected from existing sources if possible, GDF SUEZ believes that ACER should maximize its efforts to avoid asking market participants to initiate an additional information stream. The fact that TSOs/SSOs can aggregate data (and publish on a aggregated basis) implies they have non-aggregated data available. Likewise, NRAs have substantially most information available.

GDF SUEZ suggests that ACER initiates and coordinates an integration and simplification project across all current channels, so that every single piece of reportable data gets only reported once by the Market Participant to a single data receptor, and that ACER, as the ultimate data collector, sets up a reporting mechanism from any intermediate receptor to ACER itself.

In conclusion, GDF SUEZ believes that market participants themselves should only be the providers 'of the last resort' with regard to regulated data collection as referred to by Art. 8.5, and that all reasonable efforts must be made to avoid duplications and overlap in data-streams.

Recommendation and Questions (Section 4.2)

Recommendation 9: Inside information should be reported to the Agency through RIS, transparency information should be reported to the Agency through the existing sources for the publication of such regulated information. The implementing acts should require persons wanting to become a RIS to register with the Agency and define organisational requirements for RIS similar to those for RRMs.

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?

Even though the RIS concept is appealing and a logical equivalent to RRMs, GDF SUEZ is unsure about the existence today of RIS that specifically relates to energy information, as these were introduced in the context of the MAD-legislation. While GDF SUEZ will consider the possibility of using RIS as a reporting channel, mandatory reporting through RIS is not supported by GDF SUEZ (cfr. our view on mandatory reporting through RRMs) and we believe that there should indeed remain the alternative option of reporting directly to ACER.

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.

GDF SUEZ considers a reporting threshold as appropriate in view of the goal in aiding the transparency and integrity of markets. We suggest that with regard to assets, the same thresholds are used than those that apply for publication obligations i.e. 100 MW for power, and a yet-to-be-defined threshold for gas (incl. LNG).

Recommendation and Questions (Section 4.3)

Recommendation 10: The implementing acts should foresee that regulated information is reported to the Agency in an electronic form at the same time it is disclosed to the public.

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

On the form, GDF SUEZ agrees that electronic reporting is the appropriate method except under 'exceptional circumstances'.

On the timing, it appears that a multitude of delays is unavoidable in case multiple channels are used: if inside information is published by the market participant and it must also be reported (nearly) simultaneously, then this type of information will reach ACER without delay when reported directly by the publishing market participant. Information (inside or 'regulated'), that is not reported directly to ACER is likely to go through a lengthier chain of intermediate steps(RRMs or RISs) and will reach ACER later, almost regardless of the efficiency of such chain.
The question is then what constitutes the limit of an acceptable delay for reporting.
If one accepts that published (inside) information is the most relevant in the context of price impact and that this information reaches the public and ACER in very little time (one hour at most, then at least technically, reporting such information should be feasible within (nearly) the same time-limit.
At the same time, given the lesser relevancy of non-published ('regulated')information with regard to price impact, GDF SUEZ proposes to be rather lenient on this information reporting and accept e.g. 2 working days.

As a general comment, GDF SUEZ would like to emphasize the need to respect following principles regarding data collection and reporting:

- *All data collection and reporting, including content, form and format, and frequency and timing, must be directly related to the stated purpose of REMIT i.e. allowing regulators to monitor potential market abuse.*
- *In case any intermediate channels/forums are used between the Market Participant*

and ACER, rock-solid guarantees must be provided within the Implementing Acts that

- *Data confidentiality is guaranteed by such intermediate entities, and infractions will be sanctioned*
- *Data provided to intermediate entities cannot be used for any purpose other than monitoring of market abuse as defined under REMIT.*

Therefore, an appropriate level of regulation with regard to RRMs and RISs is in order and the current Art. 17 of REMIT provides insufficient guarantees with respect to both points mentioned.

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