ACER

Agency for the Cooperation of Energy Regulators

Publishing date: 21/06/2012

Document title: on Recommendations as regards the records of wholesale energy market transactions

We appreciate your feedback

Please click on the icon to take a 5' online survey
and provide your feedback about this document

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

PC_2012_R_10

21 June 2012

Agency for the Cooperation of Energy Regulators
Trg Republike 3
1000 Ljubljana, Slovenia

According to Article 7(3) of Regulation (EU) No 1227/2011 on wholesale Energy Market Integrity and Transparency ("REMIT"), the Agency for the Cooperation of Energy Regulators (the "Agency" or "ACER"), in cooperation with National Regulatory Authorities ("NRAs"), may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively monitor wholesale energy markets.

This Public Consultation Paper contains the draft 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 REMIT. It is intended to collect views from all parties interested in the implementation of REMIT (market participants, organised market places and other persons professionally arranging transactions, trade matching systems, trade reporting systems, trade repositories, financial regulatory authorities, including ESMA, competition authorities, etc.) on this public consultation document.

The Agency invites all interested parties to provide comments to the Public Consultation Paper on the 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 REMIT, and especially answers to the consultation issues listed in Annex I, by 31 July 2012, 12.00 noon, Central European Time, to consultation2012R10@acer.europa.eu.

Related Documents

ACER Documents

- ACER Work Programme 2012, http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf

Documents from other sources

- Regulation (EC) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF

- Regulation (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF

- REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border

exchanges in electricity and repealing Regulation (EC) No 1228/2003
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF

- REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:EN:PDF

- Directive 2004/39/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 21 April 2004 on markets in financial instruments,
http://eur-lex.europa.eu/LexUriServ/site/en/consleg/2004/L/02004L0039-20060428-en.pdf

- Directive 2003/6/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 28 January 2003 on insider dealing and market manipulation (market abuse),
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:096:0016:0016:EN:PDF

- European Commission proposal for a Regulation of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories (EMIR), 15 September 2010, COM(2010) 484 final,
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0484:FIN:EN:PDF

- European Commission proposal for a Directive on criminal sanctions for insider dealing and market manipulation, 20 October 2011, COM(2011) 654 final,
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0654:FIN:EN:PDF

- European Commission proposal for a Regulation on insider dealing and market manipulation (market abuse), 20 October 2011, COM(2011) 651 final,
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0651:FIN:EN:PDF

- ESMA Discussion Paper: Draft Technical Standards for the Regulation on OTC Derivatives, CCPs and Trade Repositories, 16 February 2012, Reference 2012/95
http://www.esma.europa.eu/system/files/2012-95.pdf

Table of Contents

1 Introduction

Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency[1] (hereafter referred to as "the Regulation" or "REMIT") was published in the Official Journal of the European Union on 8 December 2011 and entered into force 20 days later, on 28 December 2011.

The Regulation introduces provisions to improve integrity and transparency in wholesale energy markets and establishes common rules on the prohibition of market abuse in wholesale energy markets. It envisages the collection of wholesale energy market data and the monitoring of wholesale energy markets by the Agency and the enforcement of the prohibitions against market abuse at national level. The Regulation, in its Article 8(2) and (5), confers powers to the European Commission (hereafter referred to as "the Commission") to adopt implementing acts as regards data collection by the Agency.

According to Article 7(3)(2) of the Regulation, the Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively monitor wholesale energy markets. Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and the European Securities and Markets Authority (ESMA). Since the records of transactions are closely linked with the implementing acts and are both interdependent, this public consultation document also covers aspects related to the implementing acts according to Article 8(2) and (5) of the Regulation.

Annex I presents a summary of the questions for public consultation.

[1] OJ L 326, 8.12.2011, p. 1.

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

According to Article 8(1), first subparagraph, of REMIT, the information to be reported shall include "***the precise identification of the wholesale energy products bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction and the beneficiaries of the transaction and any other relevant information".*** The Commission, pursuant to Article 8(2) of REMIT, by means of implementing acts, shall adopt uniform rules on the reporting of information which shall be provided in accordance with the first subparagraph of Article 8(1) of REMIT.

ACER's proposal for the Record of Wholesale Energy Market Transactions is presented in Annex II.

Since the definition of wholesale energy product distinguishes, on the one hand, contracts for the supply of natural gas or electricity with delivery in the Union and derivatives relating to such contracts and, on the other hand, contracts for the transportation of natural gas or electricity in the Union and derivatives relating to such contracts, these two categories will also be distinguished in the table in Annex II.

In developing the draft records of transactions, ACER has considered the following key elements:

a. the purpose and content of reporting;

b. the elements to correctly identify the transactions and the corresponding counterparties; and

c. the level of granularity.

Three main stages of the deal life of transactions in wholesale energy products shall be considered:

a. orders as well as bids/offers before a deal is entered into ("pre-trade stage");

b. execution or conclusion of transactions ("execution stage");

c. lifecycle information of a transaction, including confirmations, amendments, cancellations and, depending on the physical or financial settlement of the transaction, information on the contractual right for physical delivery which may include the use of optionality/flexibility at the agreed point in time after execution ("scheduling/nomination") or information whether the transaction was cleared or uncleared as post-trade information ("post-trade stage").

2.1 Definitions

Since REMIT itself does not define crucial terms for the collection of data according to its Article 8, it is advisable to use the implementing acts to provide definitions for data collection in order to avoid ambiguity for the market participants who have to report information. Definitions which could be specified in the implementing acts include, inter alia, those for the notion 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". The Agency currently considers the following definitions of these terms:

“Transaction” means an agreement between two entities to exchange a wholesale energy product;

“Agreement” means a set of rules that defines the obligations concerning the exchange of a wholesale energy product (e.g. Master Trading Agreement like GTMA, ISDA, EFET, or Exchange Participation Agreement governing transactions, or bilateral agreements);

“Contract” is an agreement on a particular wholesale energy product, possibly including the specification of a delivery point, a mechanism to price the value of such wholesale energy product and a statement on the quantity to be supplied irrespective of the settlement type;

“Standardised contract“ means a contract admitted to trading at an organised market place or TSO auction platform or subject to a standard agreement;

„Non-standardised contract“ means a contract not fulfilling the requirements of a standardised contract;

“Trade” means the process of execution between at least two counterparties against a contract with the intention that there is a possibility of a financial obligation being transferred from one counterparty to another;

“Tradable Instrument” means an instrument for which a venue (including balancing market venues) has specified a description of limited characteristics of a contract so as to make the basic terms of the contract easily identifiable;

“Order to trade” means an indication expressed by a counterparty to buy or sell a tradeable instrument (including auctions, continuous trading) ;

“Bid and offer” means and indication of a party’s willingness to enter into a transaction (usually for a specified price and quantity), typically placed on an exchange or auction system;

“Execution” means acting to conclude agreements to buy or sell one or more wholesale energy product(s);

“Supply” means the sale, including resale, of electricity or natural gas, including LNG, where delivery is in the Union;

“Transportation” means the transmission and distribution of electricity as defined in Article 2 No 4 and No 5 of Directive 2009/72/EC and the transmission and distribution of natural gas as defined in Article 2 No 3 and No 5 of Directive 2009/73/EC, including transportation through an upstream pipeline network as defined in Article 2 No 2 of Directive 2009/73/EC, the transportation of LNG through other means and storage and LNG facility services in the Union;

"Market participant subject to reporting obligations" includes energy trading companies pursuant to Article 2 No 35 of Directive 2009/72/EC and Article 2 No 1 of Directive 2009/73/EC, including producers supplying their production to their in-house trading unit or energy trading company, wholesale customers pursuant to Article 2 No 8 of Directive 2009/72/EC and Article 2 No 29 of Directive 2009/73/EC, final customers pursuant to Article 2 No 9 of Directive 2009/72/EC and Article 2 No 27 of Directive 2009/73/EC as a single economic entity with a consumption at individual plants under the control of a single economic entity that have a consumption capacity greater than 600 GWh per year in so far as consumption takes place on markets with interrelated wholesale prices and does not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographical markets, transmission system operators pursuant to Article 2 No 4 of Directive 2009/72/EC and Directive 2009/73/EC, storage system operators pursuant to Article 2 No 10 of Directive 2009/73/EC, LNG facility operators pursuant to Article 2 No 12 of Directive 2009/73/EC and investment firms pursuant to Article 4(1) No 1 of Directive 2004/39/EC;

"Derivative" or "derivative contract" means a financial instrument 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, without prejudice to the definition of "energy commodity";

"Energy commodity" or "energy commodity contract" means any contract for the supply of an energy commodity traded on a spot market under the terms of which delivery is scheduled to be made within two trading days or within the period generally accepted in the market for that commodity as the standard delivery period when the transaction is settled, including any derivative contract that must be settled physically or other derivatives instruments, tradable financial indices or financial measures which may be settled physically or in cash and are not considered as 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;

"Spot market" means any commodity market in which commodities are sold for cash and delivered within two trading days or within the period generally accepted in the market for that commodity as the standard delivery period when the transaction is settled;

"Organised market place" means any trading venue for wholesale energy products, including exchanges and broker platforms, the latter only if considered as MTF.

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.

2.2 Reporting of transactions in standardised contracts

ACER's preliminary view is that the fields indicated in the table presented in Annex II.1 should be reported to ACER in order to comply with Article 8(1) of the Regulation.

REMIT already indicates a minimum set of information which is required to be included in the records of transactions: The information reported shall include the precise identification of the wholesale energy product(s) bought and sold, the price and quantity agreed, the dates and times of execution, the parties to the transaction, the beneficiaries of the transaction and any other relevant information.

As regards the content of the records of transactions, the table in Annex II.1 is organised as follows with the format details embedded under each appropriate item:

a. parties of the contract;

b. contract type; and

c. details on the transaction.

Also following the objective to avoid double reporting by market participants under EU financial market legislation and REMIT, a consistency check was made between the records of transactions proposed under REMIT, on the one hand, and the transaction reporting mechanisms already in place in the EU under MiFID and/or planned under EMIR, on the other hand. In this context, also the CESR / ERGEG advice on record keeping in wholesale energy markets and the experiences gained in the CEER pilot project were taken into consideration.

The Agency believes that reporting of standardised contracts should include reporting of orders to trade in standardised contracts. Pre-trade information, such as orders to trade, is important to detect insider trading, in particular by trying to acquire or dispose of wholesale energy products to which that information relates, according to Article 3(1)(a) of the Regulation, market manipulation, according to Article 2(2) of the Regulation, and attempts to manipulate the market according to Article 2(3) of the Regulation. One characteristic of the regular monitoring requirement to be done by organised market places is to monitor pre-trade activities. However, as many venues are linked and are already sufficiently standardised to allow cross-venue comparison of price signals, it is insufficient to rely exclusively on those venues to monitor pre-trade activities, since, by their very nature, these venues will not have access to all the relevant data - e.g. information from other organised market places, on relevant OTC transactions or inside information disclosed by market participants according to Article 4(2) of the Regulation - or typically do not take such information into account in their monitoring activities.

Orders to trade are captured via the contractual documentation and other forms of formal confirmation. Some orders originate on the electronic conduit or telephone, so only a written confirmation is issued ex-post. Some of them do not generate any written confirmation, as the telephone conversation is recorded and the parties feel that this provides sufficient protection in case of dispute. However, valid orders to trade are captured and stored in the market participant's energy trading and risk management software, where they are typically organised into trading books.

Thus, orders related to products traded on an organised market place and orders which are visible to more persons than the potential buyer and potential seller should have to be recorded and reported as if they were trades. In addition, the monitoring of day-ahead auctions would be less relevant without the collection of orders to trade. But currently, contrary to continuous markets, no harmonised supervisory framework applies at European level for the supervision of organised spot market places,[2] which is an additional reason why such orders to trade should be collected. Accordingly, it is proposed that orders to trade are stored by the organised market place concerned in order to be monitored by the market surveillance team and collected by ACER on a continuous basis from these organised market places.

[2] See the CEER final advice on the regulatory oversight of energy exchanges. A CEER Conclusions Paper, Ref. C10-WMS-13-03a, 11 October 2011.

2.3 Reporting of transactions in non-standardised contracts

Market participants, particularly in the gas markets, enter into complex long term transactions on a bilateral basis (so-called non-standardised contracts) where it is often not possible to identify precise quantities, nor price at the time of execution. Such mechanisms require different prices for each time period of delivery within the overall delivery time-range and are based on pre-agreed indices, the nature of which tend to be complex and highly individual. All such terms and optionalities are, however, agreed between counterparties before execution. In addition, quantities to be delivered have a high degree of optionality. Therefore, for these complex arrangements that fall outside of an organised market place's list of tradable instruments, a reporting regime that respects these highly customised contracts is required. Reporting of transactions in non-standardised contract should be made to the Agency by filling the mandatory fields and as many additional fields as possible of the record of transactions. Any change in price and quantities should be reported as a new transaction. In addition, the contract as such should be submitted to the Agency. ACER's preliminary view is that the fields indicated in the table presented in Annex II.2 should be reported by market participants to ACER in order to comply with Article 8(1) of the Regulation.

2.4 Reporting of lifecycle information on the post-trade stage

Both reporting of transactions in standardised and non-standardised contracts should include lifecycle information of a transaction, including confirmations, amendments, cancellations and, depending on the physical or financial settlement of the transaction, information on the contractual right for physical delivery which may include the use of optionality/flexibility at the agreed point in time after execution ("scheduling/nomination") or information whether the transaction was cleared or uncleared as post-trade information. Whilst information on whether a transaction was cleared or not can be dispelled as a separate field in Annexes II.1 and II.2, information on scheduling/nominations, which is considered vital to understand physical flows between markets as well as within markets and providing an overview on overall transaction activity of market participants, should be reported by TSOs, or third parties delegated by TSOs, on behalf of market participants. TSOs are considered as being naturally in the position to deliver such aggregated data on a daily basis under REMIT.

2.5 Unique identifier of market participants for reporting

The information transmitted to the Agency should uniquely identify the market participants involved in the transaction. Market participants have to register before entering into a transaction. Pursuant to Article 9 of the Regulation, the registration will be a two-layer process: first, at national level, for which each NRA has to establish a national register of wholesale energy market participants; second, at European level, for which the Agency has to establish the European register of market participants. The European register will be populated with the information collected at national level and transmitted to the Agency by the NRAs through a registration format that the Agency has to determine and publish by 29 June 2012.

The Agency has consulted all interested parties about the unique identifier to be used[3], and is going to determine, in close cooperation with NRAs, the registration format through which NRAs shall transmit information in national registers to the Agency, by 29 June 2012, pursuant to Article 9(3) of the Regulation.

[3] ACER public consultation document PC_2012_R_08.

In the light of comments received from interested parties on the three options outlined in the public consultation on the registration format, the Agency proposes for the records of transactions that:

- the unique identification of each market participant should be achieved either through the use of the ACER code issued by the Agency at the time the market participant registers for the first time ("ACER code") or 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;
- to allow the interoperability between the different codes in the records of transactions, each counterparty will be identified through a pair of fields: one field will contain the value of the code and the other field will contain the type of code used;
- the correspondence table between the ACER code and the allowed existing codes will be maintained and promptly updated in case of any change by the Agency through the information provided by each market participant to the relevant NRA;
- 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.

As it is also envisaged that each trader, being the natural person or algorithm that initiates/aggresses the order and/or executes the transaction, is identified, the Agency proposes that each registered market participant has to maintain a list of its traders in such a way that each person is identifiable in case of an investigation. In the record of transactions, only an anonymous code, freely generated by each market participant, will be requested, avoiding any collection of personal data.

Recommendation and questions

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.

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?

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?

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.

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?

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

3.1 List of contracts and derivatives which are to be reported and appropriate de minimis thresholds, Article 8(2)(a) of the Regulation

According to Article 8(1) of the Regulation, market participants, or another person on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade. According to Article 8(2) of REMIT, the Commission, by means of implementing acts, shall draw up a list of the contracts and derivatives, including orders to trade, which shall be reported in accordance with the first subparagraph, and an appropriate *de minimis* threshold for the reporting of transactions where appropriate.

3.1.1 List of contracts and derivatives to be reported

The establishment of a list of contracts and derivatives to be reported according to Article 8(2)(a) of the Regulation depends on the scope of the definition of wholesale energy product according to Article 2(4) of the Regulation.

The following contracts and derivatives are defined as wholesale energy products, irrespective of where and how they are traded (Article 2(4)(1) of the Regulation):

(a) contracts for the supply of natural gas or electricity with delivery in the Union;

(b) derivatives relating to natural gas or electricity produced, traded or delivered in the Union;

(c) contracts relating to the transportation of natural gas or electricity in the Union;

(d) derivatives relating to the transportation of natural gas or electricity in the Union.

According to Article 2(4)(2) of the Regulation, contracts for the supply and distribution of natural gas or electricity for the use of final customers are not wholesale energy products. However, contracts for the supply and distribution of natural gas or electricity to final customers with a consumption capacity[4] greater than 600 GWh per year of either electricity or gas shall be treated as wholesale energy products. As derivatives are defined as 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, the Agency does not consider it necessary to set up a separate list for derivatives.

[4] The consumption capacity is the consumption of a final customer at full use of this customer's production capacity. TForhe capacity to consume of a final customer shall comprise all consumption by this customer as a single economic entity, insofar as consumption takes place on markets with interrelated wholesale prices; thus, parts of the capacity to consume under the control of a single economic entity, at separated plants with a capacity to consume of less than 600 GWh per year, shall be excluded insofar as those plants do not exert a joint influence on wholesale energy market prices because they are located in different relevant geographical markets.

The proposed list of contracts in Annex III takes into account that there are different interests when setting up such a list. On the one hand, market participants generally have a high interest in having a list which is as precise as possible in order to be in a position to have sufficient clarity about the legal reporting requirements. On the other hand, there is also a need to have a certain degree of openness of the list to allow changes in products without an immediate need to adapt the list of products to be reported in accordance with Article 8(2)(a) of the Regulation. Accordingly, a similar approach to the one taken under MiFID was chosen and a general list of contracts similar to the definition of financial instrument in MiFID is proposed.

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, except markets in which balancing is mandatory for most market participants, 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. In the initial phase of data collection under REMIT, such data shall therefore be monitored by NRAs on the basis of their national competences, in the case of balancing markets. Such approach does not prevent the application of Article 13(1) of the Regulation pursuant to which NRAs shall ensure that the prohibitions set out in Articles 3 and 5 of the Regulation and the obligation set out in Article 4 of the Regulation are applied, The competent NRAs will have to inform the Agency according to Article 16(2) of the regulation in as specific a manner as possible where they have reasonable grounds to suspect that acts in breach of this Regulation are being, or have been, carried out either in that Member State or in another Member State on a case-by-cases basis.

In addition, the REMIT implementing acts may assign the Agency with the task to collect and publish a set of information regarding all wholesale energy contracts admitted to trading on organised market places. A similar approach is foreseen under the MiFID implementing Regulation (No 1287/2006) which requires the relevant competent authorities to calculate and publish a set of information regarding all shares admitted to trading on a regulated market, information which is collected and published by ESMA in the form of the MiFID database (http://mifiddatabase.cesr.eu/). The information included in a similar ACER database would increase transparency on such contracts. The list should be updated regularly by the Agency. The changes would include new contracts to be admitted to trading as well as de-listings. New admissions would have to be included on the first day of trading at the latest.

Please note that such list of contracts collected and published by the Agency would not involve the Agency approving contracts admitted to trading on organised market places. This is why the Agency would under no circumstances have any possibility to reject any contract from being introduced by an organised market place. In addition, the Agency would not have the competences to refer the organised market place when introducing new contracts to be admitted to trading to use an already existing contract. The introduction and design of contracts would remain with the organised market place. The Agency would solely collect and publish information regarding wholesale energy contracts admitted to trading on organised market places.

However, such ACER list could define a standard product taxonomy (e.g. with the dimensions commodity type (electricity/gas), transaction type (physical/financial), transaction category (commodity/transportation capacity) and country code (ISO-country code 3166-1 of the country of physical delivery or underlying for derivatives) which is binding for the industry in order to categorize transactions by their product types in the context of reporting records of transactions.

Finally, such ACER list may be used for a phased approach of implementation of reporting records of transactions under REMIT by making reporting of wholesale energy contracts dependent from the time of recording in the ACER list. ACER believes that such phased approach for the reporting of wholesale energy contracts could reflect the current level of standardisation in the market, taking into account the economic impact of the implementation.

Recommendation and questions

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?

3.1.2 *De minimis* thresholds for reporting

Article 8(2)(a) of the Regulation foresees the possibility of an appropriate *de minimis* threshold for the reporting of transactions in wholesale energy products where appropriate. The definition of any such threshold will automatically affect the registration requirement for market participants according to Article 9(1) of the Regulation, as only market participants entering into transactions which are required to be reported to the Agency in accordance with Article 8(1) of the Regulation shall register. The definition of a *de minimis* threshold therefore has to be balanced against the requirement to be able to identify the parties of the transaction according to Article 8(1) of the Regulation, if the transaction is reported by the counterparty of the transaction not benefiting from the *de minimis* threshold.

In considering a *de minimis* threshold for reporting, Recital 19 of the Regulation should be taken into account pursuant to which reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burdens for market participants. It is considered that this applies in particular to small renewable energy producers acting individually where the risk of market abuse is minimized.

The following options have been identified concerning the definition of a *de minimis* threshold:

Option A: As the scope of a *de minimis* threshold depends on the understanding of the definitions of "market participant subject to reporting obligations", "wholesale energy product" and the list of contracts to be reported according to Article 8(2)(a) of the Regulation, the implementing acts could **refrain from defining any *de minimis* threshold**. The application of these definitions and the list of contracts to be reported already limit the scope of reporting significantly, but could even be further specified to exclude small producers from the scope of market participants subject to reporting obligations or certain contracts to be reported from the list of contracts to be reported. In addition, reporting for small players can be done by a third party acting on behalf of the market participant (Article 8(4) of REMIT). In case of exchange trading, this can be done by the exchange or other RRMs. This already limits the scope of the reporting obligation to the minimum necessary. Accordingly, there may be no need to define a specific *de minimis* threshold. This option takes outmost account of the Commission's statement with the adoption of REMIT pursuant to which the Commission considers that the thresholds for reporting transactions within the meaning of Article 8(2)(a) of the Regulation and information within the meaning of Article 8(6)(a) of the Regulation cannot be set through implementing acts.

Option B: A *de minimis* threshold could be introduced that takes into account the specificities of small producers. For the purposes of REMIT, small independent producers defined as **producers operating and trading an overall capacity of up to a maximum of 2 MW**, i.e. including all of its production sites, acting individually in the market would not be subject to the reporting obligation and should therefore not be considered as market participant nor registered, except in those cases in which the producer is controlled by a company with reporting obligations. The rationale for the exclusion of supply and distribution contracts (except for the case of larger final customers) from the definition of wholesale energy products rests on the limited impact that these contracts can have in influencing, and possibly distorting, prices and other conditions in wholesale energy markets. However, this option would mean that wholesale energy transactions from market participants subject to reporting obligations with small producers would only be reported from one party and the small producer could not be identified through a unique identifier. Furthermore this approachimplies that a significant number of small renewable energy producers in several countries would still fall under the REMIT obligations as they are connected to higher voltage grids.

Option C: Similarly, in the case of small energy producers acting individually, **contracts for the sale of renewable energy sources at administratively fixed prices (feed-in tariffs)** could be excluded as they are also unlikely to have a major impact and distort prices and conditions in wholesale energy markets, except in those cases in which the producer is controlled by a company with reporting obligations. However, contracts for the sale of energy produced from renewable energy sources receiving a feed-in premium or any other supplementary payment on top of market or other contract prices are considered wholesale market products. Therefore, where renewable support schemes based on feed-in tariffs operate, producers of energy from renewable energy sources would not need to register as market participants as long as they sell their energy entirely at regulated (feed-in) tariffs. However, also this option would lead to a situation where wholesale energy transactions with small producers would only be reported from one party and the small producer could not be identified through a unique identifier. In addition, it is questionable whether such option may sufficiently take into account specificities of national feed-in tariff schemes and bears the risk of creating loopholes at least in some Member States. Furthermore a significant number of small renewable energy producers in several countries with quota or market premium support schemes would still fall under the REMIT obligations, with the potential disadvantages as described above.

In any case, any *de minimis* threshold should only apply if the market participant does not trade at organised market places.

Recommendation and questions

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.

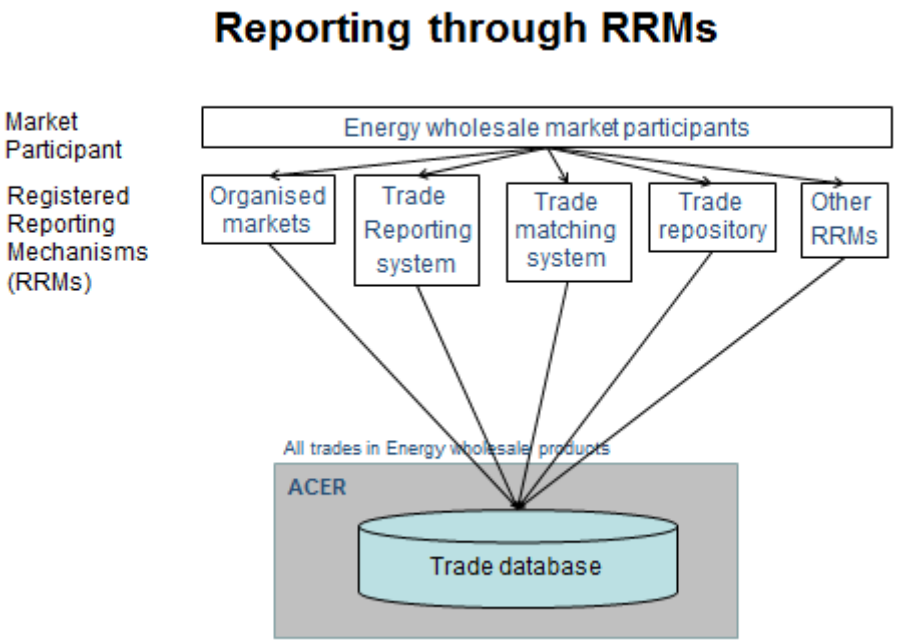
Question 7
Which of the three options listed above would you consider being the most appropriate concerning the *de minimis* threshold for the reporting of wholesale energy transactions? In case you consider a de minimis threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option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

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

3.2 Uniform rules on the reporting of information, Article 8(2)(b) of the Regulation

According to Article 8(2)(b) of the Regulation, the Commission shall, by means of implementing acts, adopt uniform rules on the reporting of information which is to be provided in accordance with Article 8(1) of the Regulation. In addition, pursuant to Article 8(2), third sentence, of the Regulation, the implementing acts shall take account of existing reporting systems.

In order to facilitate data collection by the Agency, an obligation to report records of transactions in standardised contracts through organised market places, trade repositories and registered reporting mechanisms[5] (hereafter referred to as "RRMs") could be introduced, in a similar way as in the EU financial market legislation.



Firstly, reporting through organised market places will improve the completeness and quality of the reporting by market participants.

Secondly, reporting through trade repositories registered by ESMA under EMIR will again improve the completeness and quality of the reporting by market participants, on the one hand, and avoid double reporting, on the other hand. Only data not already reported to ESMA would have to be reported to ACER.

Thirdly, a similar concept of third party transaction reporting through RRMs is already being implemented under financial market rules through so-called "Approved Reporting Mechanisms (ARMs)", notably in larger Member States (e.g. Germany or United Kingdom) and will be applied within the reviewed transaction reporting scheme under MiFID/MiFIR currently under discussion. In fact, also EMIR foresees a third party transaction reporting to competent financial market authorities through trade repositories. Envisaging a similar approach for the transaction reporting

[5] "Registered Reporting Mechanism (RRM)" means a person registered by the Agency to provide the service of reporting details of records of transactions to the Agency on behalf of market participants.

under REMIT would therefore ensure a harmonised reporting under REMIT and EU financial market rules. Although there will legally be three separate reporting obligations on market participants under REMIT, EMIR and MiFID/MiFIR, in practice there would be no double reporting.

In addition, the effect of double reporting of brokered and exchange traded instruments will be mitigated if a consistent identifier is used for every trade. Where a participant already has an established workflow to a trade repository and it would prove to be prohibitively expensive to re-engineer such a flow, a market participant should be free to use such a trade repository to fulfil their reporting requirements under REMIT. However, where such a workflow does not exist, as is likely with producers and suppliers of energy services, establishing a link and all associated workflows would prove expensive. Therefore the ACER database will provide sufficient information to satisfy reporting under EMIR under a proposed direct link between the two databases.

For reasons related to the best functioning of the IT-system, also RRMs should be uniquely identified for REMIT purposes through a registration. ACER intends to keep the registration of market participants separated from the registration of other companies acting as RRM providers and therefore involved in REMIT reporting functions, but different from market participants. Since RRMs will report to the Agency, they should register directly with the Agency.

Any organisation will be eligible to become an RRM under REMIT subject to conformity with operational requirements, which will be set on a harmonised basis. For example, an organised market place, a trade matching or trade reporting system, trade repository or market participants themselves could become an RRM if they so choose.

The main disadvantage of this approach is that it may impose additional costs on reporting market participants, as, for instance, the RRMs may charge a fee for the transmission of data on their behalf, notably when additional system investments are necessary. However, this fee may be lower than the costs incurred by the market participant when it chooses to report its transactions itself.

The proposed approach could also seek to harmonise the framework under which RRMs operate, possibly including the use of existing standardised trade and process data formats and protocols for each class of data (e.g. standard scheduling/nomination formats for gas (EDIG@a) and electricity (ESS)). The costs would therefore be likely to be limited.

However, transactions in non-standardised contracts should be reported directly to the Agency.

Recommendation and questions

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.

3.3 Timing and form in which information is to be reported, Article 8(2)(c) of the Regulation

According to Article 8(2)(c) of REMIT, the Commission, by means of implementing acts, shall lay down the timing and form in which this information shall be reported.

In order to ensure the timeliness and effectiveness of the monitoring of wholesale energy data, it is proposed to foresee a similar delay for the reporting of records of transactions in standardised contracts under REMIT to that foreseen under EU financial market rules, i.e. as quickly as possible and no later than the close of the following working day following the execution, modification or termination of the transaction for reporting of transactions in standardised contracts. Transactions in non-standardised wholesale energy contracts could be required to be reported with a longer delay, e.g. within one month following the execution of the transaction.

The records of transactions in wholesale energy products should be made in an electronic form.

Recommendation and questions

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?

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

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

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?

3.4 Avoidance of double reporting obligations for derivatives, Article 8(3) of the Regulation

Article 8(3) of REMIT stipulates that persons referred to in Article 8(4)(a) to (d) of the Regulation who have reported transactions in accordance with Directive 2004/39/EC or applicable Union legislation on derivative transactions, central counterparties and trade repositories (EMIR) are not subject to double reporting obligations relating to those transactions. Recital 19 of REMIT states that reporting obligations should be kept to a minimum and not create unnecessary costs or administrative burden for market participants. The uniform rules for reporting should therefore undergo an *ex-ante* cost-benefit analysis and avoid double reporting. Therefore, they should take account of reporting frameworks developed under other relevant legislation. Furthermore, the required information or parts thereof should be collected from other persons and/or from existing sources where possible. Article 8(3)(2) of REMIT hence stipulates that without prejudice to the first subparagraph, the implementing acts may allow organised market places and trade matching or trade reporting systems to provide the Agency with records of wholesale energy transactions.

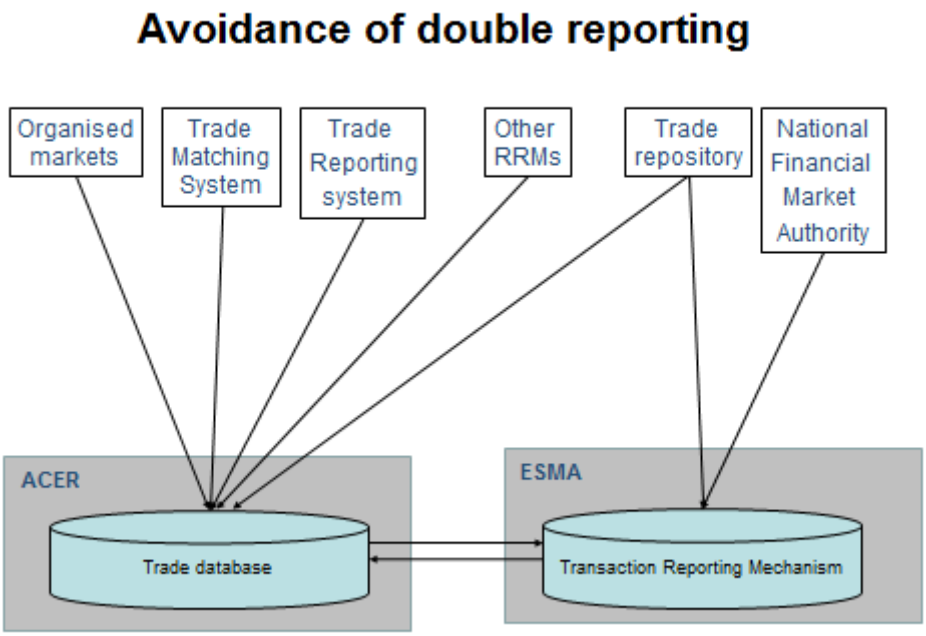
Hence, reporting under MiFID to national financial market authorities and under EMIR to trade repositories have to be considered. However, according to Article 8(3) of the Regulation, the avoidance of double reporting only applies to persons referred to in Articles 8(4)(a) to (d) of the Regulation and, therefore, particularly not to trade repositories registered or recognised under EMIR.

According to Article 81(1) of EMIR, trade repositories shall ensure that the entities referred to in paragraph 3 have direct access to the details of derivative contracts. In addition, according to Article 81(2) of EMIR, a trade repository shall collect and maintain data and shall ensure that the entities referred to in paragraph 3 have direct and immediate access to the details of derivatives contracts they need to fulfil their respective responsibilities and mandates. The Agency is referred to as such an entity in Article 81(3)(j) of EMIR. The Agency may therefore access transactions in derivatives contracts collected and maintained by trade repositories registered under EMIR. According to Article 81(5) of EMIR, the European Securities and Markets Authority (ESMA) shall develop draft regulatory technical standards specifying the frequency and the details of the information referred to in paragraphs 1 and 3 as well as operational standards required in order to aggregate and compare data across repositories and for the entities referred to in paragraph 3 to have access to information as necessary. In parallel to this consultation, the Agency is consulted by ESMA on these draft regulatory technical standards.

However, where a substantial part of the REMIT data requirement is not met under EMIR (or MiFID), RRMs should be required to report the complete data set directly to ACER when it is efficient to do so or where it would be undesirable for every market participant to maintain technical specifications that marked each instrument for reporting in one direction or another. For example, spot market contracts that are generally physically settled would require reporting under REMIT, but not under EMIR or MiFID. The same currently applies for pre-trade orders. To sub-divide such a flow would require considerable change to segment and additionally process every transaction. Under these circumstances competent authorities under both EMIR and MiFID could become receivers of information from the Agency.

Concerning data exchange with financial market authorities, ACER is already in close cooperation with the ESMA and presumes that, as indicated in Article 8(4)(f) of the Regulation, any necessary data exchange with ESMA and national financial market authorities may be done through ESMA, in particular through ESMA's Transaction Reporting Exchange Mechanism.

Taking into account the reporting through the above-mentioned RRMs under REMIT, the following reporting channels could apply:



Recommendation and questions

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?

3.5 Reporting channels, Article 8(4) of the Regulation

In accordance with Article 8(4) of the Regulation, for the purposes of paragraph 1, information shall be provided by (a) the market participant, (b) a third party on behalf of the market participant, (c) a trade reporting system, (d) an organised market place, a trade-matching system or other person professionally arranging transactions, (e) trade repositories registered or recognised under EMIR or a competent authority which has received this information in accordance with Article 25(3) of Directive 2004/39/EC or ESMA when it has received this information in accordance with applicable Union legislation on derivative transactions, central counterparties and trade repositories. While overall responsibility rests with market participants, once the required information is received from a person listed in Article 8(4)(b) to (e) of the Regulation, the reporting obligation on the market participant in question shall be considered fulfilled (Article 8(1) 3rd sentence of REMIT).

It is proposed that at least the entities listed in Article 8(4)(a) to (e), excluding competent financial market authorities, could apply to become RRMs under REMIT to report transactions on behalf of market participants.

Recommendation and questions

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?

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

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

According to Article 8(5) of the Regulation, market participants shall provide the Agency and national regulatory authorities with the following information:

- Information related to the capacity and use of facilities for production of electricity or natural gas,
- Information related to storage of electricity or natural gas,
- Information related to consumption of electricity or natural gas,
- Information related to the transmission of electricity or natural gas
- Information related to the capacity and use of LNG facilities, including planned or unplanned availability of these facilities,

for the purpose of monitoring trading in wholesale energy markets. The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible.

The wording of the information listed in Article 8(5) of the Regulation is identical to the wording of Article 2(1)(b) of the Regulation concerning the definition of information for the purpose of the definition of inside information, on the one hand, and with the wording of Article 4(1) of the Regulation concerning the inclusion of inside information to be disclosed according to Article 4(1) of the Regulation, on the other hand.

Therefore, the definition of "information" according to Articles 4(1) and 8(5) and (6) of the Regulation is understood as "regulated information". The concept of "regulated information" is used under the Transparency Directive (Directive 2004/109/EC, currently under review) for information which is required to be disclosed under that Directive, under Article 6 of MAD or under the laws, regulations or administrative provisions of a Member State adopted under Article 3(1) of the Transparency Directive. It is proposed to also use this concept under REMIT for information to be disclosed under REMIT or under Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes, to be reported under Article 8(5) and (6) of the Regulation.

4.1 Information to be reported, Article 8(5) of the Regulation

On the one hand, ACER considers that transparency is needed to ensure the proper functioning of the internal energy market. Legally binding transparency applications are put in place by Regulations (EC) No 714/2009 and (EC) No 715/2009 and by REMIT with the obligation to publish inside information, including relevant information about the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

On the other hand, ACER and NRAs must have access to fundamental data in order to properly monitor the market. Pursuant to Article 8(5) of the Regulation, market participants shall provide the Agency and NRAs with information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities.

ACER therefore considers that information that must be reported under Article 8(5) should be twofold:

- Inside information;
- Transparency information.

4.1.1 Inside information to be reported

Under Article 3(4)(b) of REMIT, market participants shall report to ACER and NRAs information related to unplanned outages leading electricity and natural gas producers, operators of natural gas storage facilities or operators of LNG import facilities to enter a transaction the sole purpose of which is to cover the immediate physical loss resulting from these outage outages, where not to do so would result in the market participant not being able to meet existing contractual obligations or where such action is undertaken in agreement with the transmission system operator(s) concerned in order to ensure safe and secure operation of the system.

Under Article 4(2), market participants shall report to ACER and NRAs inside information, of which the publication is delayed.

Moreover, ACER deems appropriate that the Agency and NRAs collect also inside information disclosed according to Article 4(1) of the Regulation. For the purpose of monitoring trading in wholesale energy markets, it is essential that the Agency and NRAs are immediately informed about the inside information disclosed according to Article 4(1) of the Regulation.

The main advantages of this approach are the following: regulators could receive, not only the delayed inside information (which has to be reported to ACER and NRAs according to art. 4.2) or the information on unplanned outages under the circumstances described in art. 3.4.b), but all inside information published by market operators and, consequently, regulators would not need to search for the inside information on the companies' websites in case they choose to proceed by using their own website for information disclosure; ACER and NRAs could orient the way this information is reported, i.e. by the RISs –Regulated Information Services, which can also provide market participants for the inside information publication service.
The main advantages of this approach are the following: regulators could receive, not only the delayed inside information (which has to be reported to ACER and NRAs according to art. 4.2) or the information on unplanned outages under the circumstances described in art. 3.4.b), but all inside information published by market operators and, consequently, regulators would not need to search for the inside information on the companies' websites in case they choose to proceed by using their own website for information disclosure; ACER and NRAs could orient the way this information is reported, i.e. by the RISs –Regulated Information Services, which can also provide market participants for the inside information publication service. Accordingly, pursuant to Article 8(5) of the Regulation, market participants shall provide the Agency and NRAs with inside information to be disclosed related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned availability of these facilities and to be disclosed according to Article 4(1) of the Regulation.

4.1.2 Transparency information to be reported

ACER deems appropriate that all transparency information should contain all data that shall be published under the transparency obligations of Regulations (EC) No 714/2009 and (EC) No 715/2009, including applicable guidelines and network codes. They shall be reported as individual non anonymous data, not as aggregated anonymous data, which is the format under which they are published. Assuming that the ERGEG Advice concerning Comitology Guidelines on Fundamental Electricity Data Transparency of December 7th 2010 will be adopted, the information listed therein should be reported to the Agency.

Recommendation and questions

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?

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

4.2 Uniform rules on the reporting of information, Article 8(6)(a) of the Regulation

According to Article 8(6)(a) of the Regulation, the Commission shall, by means of implementing acts, adopt uniform rules on the reporting of information to be provided in accordance with Article 8(5) of the Regulation and on appropriate thresholds for such reporting where appropriate.

4.2.1 Inside information

On the basis of experiences from financial regulators on the implementation of Directive 2004/109/EC concerning the disclosure of inside information according to the Market Abuse Directive, it could be an option that inside information is reported to the Agency through Regulated Information Services (RIS) registered by the Agency, in particular transparency platforms that may offer market participants to publish inside information.

The reporting through RIS would significantly facilitate data collection by the Agency. At the same time, RIS may serve as platforms for the disclosure of inside information according to Article 4(1) of the Regulation if they fulfil applicable technical preconditions on data security and operational reliability.

Similar to the reporting of transactions through RRMs, reporting of inside information through RISs would improve the quality of the reporting, on the one hand, and help avoiding double reporting, on the other hand. This approach would entail that all entities involved in reporting information on behalf of market participants are adequately registered and the standards that RISs need to comply with will be set on a harmonised basis.

The main disadvantage of this approach is that it may impose costs on reporting market participants, as the RISs may charge a fee for the transmission of data on their behalf, notably when additional systems investments are necessary. However, this fee may be lower than the costs incurred by the market participant when it chooses to report its information itself.

For reasons related to the functioning of the IT-system, also RIS should be uniquely identified for REMIT purposes through a registration. ACER intends to keep the registration of market participants separated from the registration of other companies acting as RISs and therefore involved in REMIT reporting functions but different from market participants totally separated. The Agency believes that these other entities acting as RIS should register at ACER.

However, an alternative could be to leave at least one reporting channel for reporting of some regulated information open in order to enable market participants to report such information also directly to the Agency.

4.2.2 Transparency information to be reported

REMIT states that the reporting obligation shall be minimised by collecting such data or any part of them from existing sources if possible[6]. This leads to take into account existing and future transparency platforms under Regulations (EC) No 714/2009 and (EC) No 715/2009. Accordingly, the collection of data to be published on transparency platforms could be considered sufficient for the data collection of transparency information by the Agency.

Reporting of transparency information could normally take place through transparency platforms from TSOs, organised market places or regional or European platform operators (e.g. ENTSO-

[6] Article 8(5) of the Regulation.

E/ENTSO-G). Since TSOs are considered market participants, they will already be registered under REMIT. Other entities would have to register as RISs as indicated above.

However, an alternative could be to leave at least one reporting channel for reporting of some regulated information open in order to enable market participants to report such information also directly to the Agency.

Recommendation and Questions

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?

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.

4.3 Timing and form in which information is to be reported, Article 8(6)(b) of the Regulation

According to Article 8(6)(b) of the Regulation, the Commission shall, by means of implementing acts, lay down the timing and form in which that information is to be reported.

4.3.1 Timing of the reporting

The implementing acts could foresee that whenever market participants disclose regulated information, they shall at the same time file that information with the Agency and make it available to the competent national regulatory authorities without delay. Similar rules apply in the EU financial market where Directive 2004/109/EC and its implementing Directive 2007/14/EC foresee the filing of regulated information, including inside information according to Directive 2003/6/EC, to the competent authority at the same time the information is disclosed to the public.

4.3.2 Form of the reporting

Furthermore, the implementing acts could foresee that regulated information should be reported in an electronic form except under exceptional circumstances.

Recommendation and Questions

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?

5 Conclusions and taking the way forward

This Public Consultation Paper contains the draft 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 REMIT. Through the Public Consultation the Agency intends to collect views from all parties interested in the implementation of REMIT (market participants, organised market places and other persons professionally arranging transactions, trade matching systems, trade reporting systems, trade repositories, financial regulatory authorities, including ESMA, competition authorities, etc.) on the Agency's proposal for the Recommendations to the Commission.

The Agency invites all parties to provide comments on this Public Consultation Paper, and especially to answer the consultation issues listed in Annex I, by 31.7.2012, 12.00 noon, Central European Time, to consultation2012R10@acer.europa.eu.

The Agency seeks to provide the Commission, DG Energy, with its recommendations on the record of transactions and the implementing acts by 30 September 2012.

Following the adoption of the implementing acts, the Commission should re-examine them, after consulting the Agency, at least once every two years.

Annex I

Summary of questions

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

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?

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?

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.

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?

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?

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.

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

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

Question 10

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

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

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?

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

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

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

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

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

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?

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.

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

Annex II.1

Record of Wholesale Energy Market Transactions, including Orders to Trade, in Standardised Contracts

Field No	Field Identifier	Description	Relevant for supply or transportation contracts	Electricity or Gas	Relevant for spot or derivatives contracts
	Parties to the contract				
1.	**Reporting time stamp**	Date and time of reporting.	Both	Both	Both
2.	**ID of market participant reporting the transaction**	Unique code of the market participant that reports the transaction.	Both	Both	Both
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).	Both	Both	Both
4.	**ID of the other market participant**[7]	A unique code to identify the counterparty of the transaction by a unique code (see above).	Both	Both	Both
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).	Both	Both	Both
6.	**Initiator Trader Username**	The username as identified at the venue of the natural	Both	Both	Both

[7] For auctions, this may also be the trading venue or CCP.

		individual who initiated the order or the internal username in case of bilateral transactions.			
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.	Both	Both	Both
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.	Both	Both	Both
9.	**ID of the reporting party**	ID of the reporting party or a third reporting party.	Both	Both	Both
10.	**Transaction Capture Time of the reporting party**	Date and Time for which the reporting party received the transaction from the source.	Both	Both	Both
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.	Both	Both	Both
12.	**Beneficiary of the transaction**	If the beneficiary market participant of the transaction is not counterparty to this	Both	Both	Both

		transaction it has to be identified by an unique code.			
13.	**Buy/sell indicator**	Identifies whether the transaction was a buy or sell for the reporting market participant.	Both	Both	Both
	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.	Both	Both	Both
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.	Both	Both	Both
16.	**Delivery point or zone**	Physical or virtual point where the delivery takes place.	Both	Both	Both
17.	**Delivery Start Date and Time**	Start date and time of delivery.	Both	Both	Both
18.	**Delivery End Date and Time**	End date and time of delivery.	Both	Both	Both

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.	Both	Both	Derivatives
	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.	Both	Both	Both
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.	Both	Both	Both
22.	**Transaction Type**	Indicator that signifies whether a transaction is an initiating order, an aggressing trade,	Both	Both	Both

		an option or some other transaction type, e.g. Confirmation, Novation (Swap), Broker Give Up, Join the Trade, Gas Swing Trade, Capacity Trade, etc.			
23.	**Order Type**	Type of the order executed.	Both	Both	Both
24.	**Transaction time stamp**	The day and time the transaction was executed or modified.	Both	Both	Both
25.	**Order time stamp**	The day and time the order was placed or modified.	Both	Both	Both
26.	**Time Identifier**	Indicating the time zone, expressed as coordinated time UTC.	Both	Both	Both
27.	**Unit Price**	Price indicating the value of the contract.	Both	Both	Both
28.	**Price Notation**	Indicates the currency in which the price is expressed.	Both	Both	Both
29.	**Quantity**	Where relevant the number of units of the wholesale energy product, or the number of contracts included in the transaction if applicable.	Both	Both	Both
30.	**Quantity Unit**	GJ, MWh referenced in Time unit quantity.	Both	Both	Both
31.	**Cancelation flag**	An indication as to whether the transaction was cancelled, note this should include the withdrawal of orders	Both	Both	Both

		from the market.			
32.	**Cleared / Uncleared**	An indication whether the transaction was cleared or not.	Both	Both	Both
33.	**Option indicator**	Identification whether it is a buy or a sell option (i.e. call or put).	Both	Both	Derivatives
34.	**Swap indicator**	Identification whether the transaction was a swap or not.	Both	Both	Derivatives
35.	**Derivative and its envisaged settlement type**	E.g. settlement type as envisaged at the time of the execution (“Physical” or “financial”).	Both	Both	Derivatives
36.	**Originating Market**	Identifies the originating market area concerned.	Transportation	Both	Both
37.	**Destination Market**	Identifies the market area where the delivery will take place.	Transportation	Both	Both
38.	**Intrasystem**	Where applicable the system used to transport between the seller’s and buyer’s system.	Transportation	Both	Both
39.	**Interconnection Point**	Identification of the border or border point of a transportation contract.	Transportation	Both	Both

Annex II.2

Record of Wholesale Energy Market Transactions in Non-Standardised Contracts

Field No	Field Identifier	Description	Relevant for supply or transportation contracts	Electricity or Gas	Relevant for spot or derivatives contracts	Mandatory fields
	Parties to the contract					
1.	**Reporting time stamp**	Date and time of reporting.	Both	Both	Both	Mandatory
2.	**ID of market participant reporting the transaction**	Unique code of the market participant that reports the transaction.	Both	Both	Both	Mandatory
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).	Both	Both	Both	Mandatory
4.	**ID of the other market participant**	A unique code to identify the counterparty of the transaction by a unique code (see above).	Both	Both	Both	Mandatory
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).	Both	Both	Both	Mandatory
6.	**ID of the reporting**	ID of the reporting party or a third	Both	Both	Both	Mandatory

	party	reporting party.				
7.	**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.	Both	Both	Both	Mandatory
8.	**Beneficiary of the transaction**	If the beneficiary market participant of the transaction is not counterparty to this contract it has to be identified by an unique code.	Both	Both	Both	Mandatory
9.	**Buy/sell indicator**	Identifies whether the transaction was a buy or sell for the initiating market participant.	Both	Both	Both	Mandatory
	Contract type					
10.	**Contract identification**	If the contract in question does not have a unique identification code, the report must include the name and the characteristics of the contract.	Both	Both	Both	
11.	**Product delivery profile**	Identification of the delivery profile (baseload, peak, off-peak, block hours or other) which	Both	Both	Both	Mandatory

		correspond to the delivery periods of a day.				
12.	**Delivery point or zone**	Physical or virtual point where the delivery takes place.	Both	Both	Both	Mandatory
13.	**Delivery Start Date and Time**	Start date and time of delivery.	Both	Both	Both	
14.	**Delivery End Date and Time**	End date and time of delivery.	Both	Both	Both	
15.	**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.	Both	Both	Derivatives	
	Details on the transaction					
16.	**Transaction Type**	Indicator that signifies whether a transaction is an initiating order, an aggressing trade, an option or some other	Both	Both	Both	

		transaction type, e.g. Confirmation, Novation (Swap), Broker Give Up, Join the Trade, Gas Swing Trade, Capacity Trade, etc.				
17.	**Transaction date and time**	The day and time the transaction was executed or modified.	Both	Both	Both	Mandatory
18.	**Price elements**	Price components which indicate the value of the contract. E.g. name of the index used to price the product.	Both	Both	Both	Mandatory
19.	**Quantity**	Where relevant the number of units of the wholesale energy product, or the number of contracts included in the transaction if applicable.	Both	Both	Both	Mandatory
20.	**Quantity Unit**	GJ, MWh referenced in Time unit quantity.	Both	Both	Both	Mandatory
21.	**Cleared / Uncleared**	An indication whether the transaction was cleared or not.	Both	Both	Both	
22.	**Option indicator**	Identification whether it is a buy or a sell option (i.e. call or put).	Both	Both	Derivatives	

23.	**Swap indicator**	Identification whether the transaction was a swap or not.	Both	Both	Derivatives	
24.	**Derivative and its envisaged settlement type**	E.g. settlement type as envisaged at the time of the execution ("Physical" or "financial").	Both	Both	Derivatives	
25.	**Originating Market**	Identifies the originating market area concerned.	Transportation	Both	Both	
26.	**Destination Market**	Identifies the market area where the delivery will take place.	Transportation	Both	Both	
27.	**Intrasystem**	Where applicable the system used to transport between the seller's and buyer's system.	Transportation	Both	Both	
28.	**Interconnection Point**	Identification of the interconnection point of a transportation contract.	Transportation	Both	Both	
	Additional information for non-standardised contracts					
29.	**Uploaded pdf file of the contract**		Both	Both	Both	Mandatory

Annex III

List of contracts to be reported

Section A
Energy commodity contracts
for the supply of natural gas or electricity with delivery in the Union

(1) Intraday contracts for the supply of electricity where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;

(2) Within-day contracts for the supply of natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;

(3) Day-ahead contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;

(4) Two-days-ahead contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they are auctioned or continuously traded;

(5) Week-end contracts for the supply of electricity or natural gas where delivery is in the Union irrespective of where and how they are traded, in particular regardless of whether they auctioned or continuously traded;

(6) Long-term contracts in electricity or natural gas that are settled physically where delivery is in the Union irrespective of where and how they are traded;

(7) Any other commodity contract for which delivery is scheduled to be made within the period generally accepted in the market for that commodity as the standard delivery period when the transaction is settled, including other derivatives instruments, financial indices or financial measures which may be settled physically or in cash and are not considered as financial instruments as set out in points (4) to (1) of Section C of Annex I to Directive 2004/39/EC as implemented in Articles 38 and 39 of regulation (EC) No 1287/2006.

Section B
Commodity contracts
for the transportation of natural gas or electricity in the Union

(1) Contracts relating to the transportation of electricity in the Union between two or more bidding areas or within a bidding area where the price or existence of the contract has an impact on the price of the same wholesale energy products in the Union, this includes but is not limited to contracts acquired in capacity auctions, reservations for cross-border or other capacity;

(2) Contracts relating to the transportation of natural gas in the Union between two or more bidding areas or within a bidding area where the price or existence of the contract has an impact on the price of the same wholesale energy products in the Union, this includes but is not limited to contracts acquired in capacity auctions, reservations for cross-border or other capacity.

ACER

Agency for the Cooperation of Energy Regulators

Publishing date: 21/06/2012

Document title: on Recommendations as regards the records of wholesale energy market transactions

We appreciate your feedback

Please click on the icon to take a 5' online survey
and provide your feedback about this document