

Public consultation on ACER's RRM Requirements for transaction reporting under REMIT

Evaluation of Responses

PC_2014_R_06

20 March 2015

Table of Contents

1 INTRODUCTION	3
2 RESPONDENTS.....	3
3 RESPONSES RECEIVED	4
Question 1	4
Question 2	4
Question 3	5
Question 4	6
Question 5	6
Question 6	7
Question 7	7
Question 8	7
Question 9	8
Question 10	8
Question 11	8
Question 12	8
Question 13	8
Question 14	9
Question 15	9
ANNEX 1 – ACER.....	11
ANNEX 2 – LIST OF RESPONDENTS	12

1 Introduction

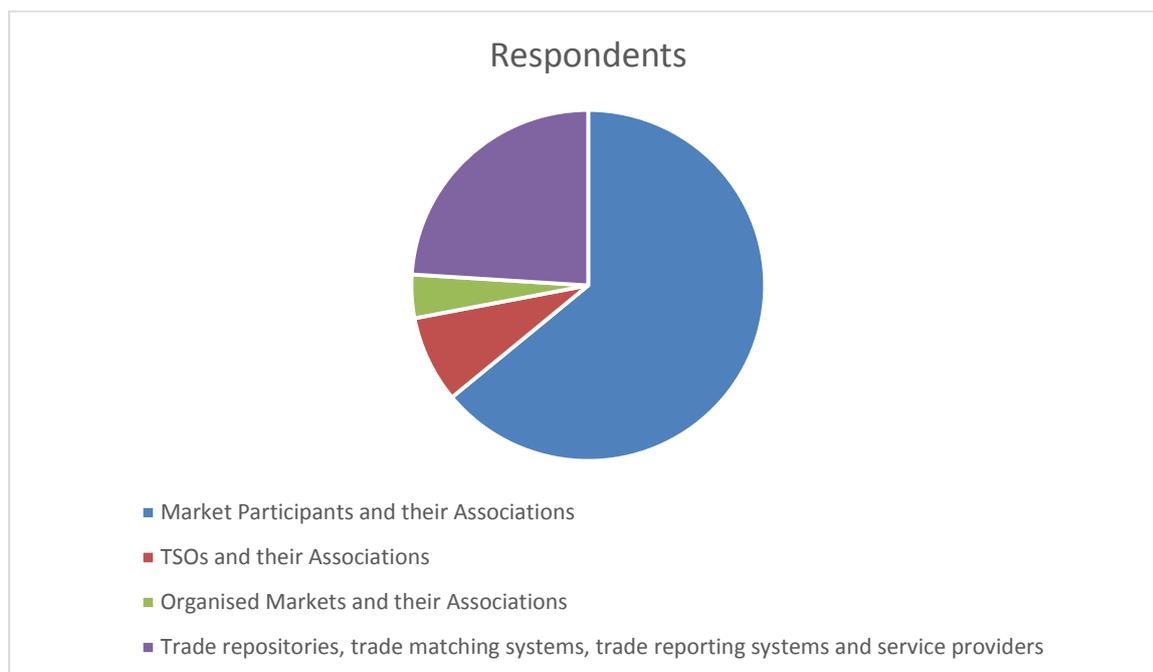
On 22 July 2014, ACER launched a second public consultation on the Requirements for the Registration of Registered Reporting Mechanisms (RRMs) (RRM Requirements) which was open until 2 September, based on the draft Implementing Acts published by the Commission in July and taking into account the input received during the first consultation in spring 2014. The public consultation document consisted of 15 questions, and the consultation lasted until 2 September 2014. A public workshop was held on 16 July 2014 to discuss with stakeholders about the public consultation document.

A first public consultation on this topic was held in the context of the Agency's public consultation on technical requirements for data reporting under REMIT from 22 March to 13 May 2013.

The public consultation paper was intended to collect views on the RRM requirements from all parties interested in the implementation of REMIT. The proposed first release of the RRM requirements was attached as an annex to the consultation paper. The RRM requirements were based on the technical requirements which the Agency at the time expected for the Commission's draft implementing acts.

2 Respondents

The public consultation launched solicited feedback from various stakeholders. In total, the Agency received 25 responses to the second consultation, 3 of which by European or international organisations. The following diagram shows the distribution of stakeholders responding to the public consultation:



The table in Annex 2 lists the names of all respondents to the consultation, including their country/area of representation.

3 Responses received

In general, the respondents welcomed the timely consultation on the draft RRM requirements and stressed the importance of the document for market participants and reporting entities. The respondents highlighted that the quality of the document has improved significantly over the last months and noticed that much of the feedback provided in the first consultation were taken into account.

Question 1

Do you agree with the Agency's view that post-trade events related to wholesale energy products shall be reported by trade matching or trade reporting systems?

Respondents' feedback

The respondents expressed divergent opinions on this question. Some agree that post-trade events shall be reported by Trade-Matching-Systems and Trade-Reporting-Systems in case they cannot be reported by organised market places. Others argue that the information may not always be available to Trade-Matching-Systems and Trade-Reporting-Systems.

ACER's view

The Agency appreciates the feedback received. Commission Implementing Regulation (EU) No 1348/2014 has in the meantime clarified that transaction reporting in the first phase of data collection as of 7 October 2015 will be limited to the following reporting channels: Organised market places, Trade-Matching-Systems and Trade-Reporting-Systems. Therefore, post-trade events will also have to be reported through these channels. Replies relevant to the Agency's Transaction Reporting User Manual (TRUM) will be considered in that framework.

Question 2

Do you agree that the standards and electronic formats to be established by the Agency according to Article 10(3) of the draft Implementing Acts shall apply to Trade Repositories and Approved Reporting Mechanisms for the reporting of data covered by EMIR and / or other relevant financial market legislation? If not, please justify your position.

Respondents' feedback

Most respondents expressed their concerns against applying the Agency's standards and electronic formats to Trade Repositories and Approved Reporting Mechanisms, if they only report EMIR or MiFID data. They are afraid that the application of ACER's standards and electronic formats would increase costs for Market Participants. In addition, most respondents are in favour of a simplified registration process for Trade Repositories and Approved Reporting Mechanisms with the Agency for reporting EMIR and MiFID data to the Agency.

ACER's view

The Agency acknowledges the concerns expressed by stakeholders and will aim at limiting the burden for Trade Repositories and Approved Reporting Mechanisms as much as possible for the reporting of EMIR and MiFID data, but any transaction reporting has to comply with the operational reliability and data quality necessary for fulfilling the Agency's market monitoring tasks under REMIT.

Question 3

Do you agree that the requirements set out above adequately ensure the efficient, effective and safe exchange and handling of information without imposing unnecessary burdens on reporting entities?

Respondents' feedback

In general, respondents considered the requirements appropriate, but also expressed a need for a greater level of detail. The technical specifications should be made publicly available as soon as possible.

Several respondents stressed the need to clarify if a 'reporting delegation chain' possible (counterparty A delegates reporting to counterparty B which delegated reporting of A and B to a third-party RRM) and were wondering whether in this case, A should indicate the third-party RRM of B as its RRM.

Some respondents also asked for clarification if Market Participants can register with multiple RRMs.

ACER's view

The Agency welcomes the positive feedback received on the requirements and has hast further clarified them in the final RRM requirements document. The technical specification document will, however, not be made publicly available for reasons of operational reliability. It will only be available for RRM applicants that have signed a Non-Disclosure-Declaration with the Agency during the RRM registration process. The RRM registration opened on 8 January 2015 and the technical specification document is made available to RRM applicants as soon as they have passed the identification stage of the RRM registration process.

Delegation chains are possible and the counterparties should inform each other about their RRMs in order to enable each market participant to comply with its obligation under Article 11(2) of Commission Implementing Regulation (EU) No 1348/2014 to take reasonable steps to verify the completeness, accuracy and timeliness of the data which they submit through third parties.

Market Participants can indeed register with multiple RRM and inform about it in the context of their registration as a Market Participant with the competent NRA within the registration system.

Question 4

Do you agree with the Agency's view that the same requirements shall apply to all RRM?

Question 5

If your reply to question 4 above is negative, please explain which requirements should apply differently to different RRM and why.

Respondents' feedback on questions 4 and 5

Several respondents were in favour of lighter requirements for self-reporting Market Participants for the reporting of own transactions, counterparty transactions and / or group transactions. The suggestion was that only technical requirements should apply to self-reporting Market Participants, while organisational requirements should not apply, i.e. self-reporting Market Participants should only go through the testing phase of the registration process and neither compliance reports nor audit reports should be required. Some respondents also stressed that the requirements should not apply to entities reporting data on request to the Agency according to Article 4 of the draft Implementing Acts and suggested that this should be explicitly stated in the RRM requirements document. More specifically, some respondents considered the requirements on secure and timely transmission of data too costly for Market Participants who wish to become RRM.

Several respondents proposed lighter requirements for the reporting of data that are already in the public domain, lighter requirements for SSOs and LSOs as they only have to report information concerning the capacity and use of their facilities, lighter requirements for self-reporting entities reporting non-standard contracts or at least different requirements depending on the type of contract, rather than on the reporting entity. Some respondents found the requirements disproportionate for TSOs as regulated companies and proposed that TSOs who act on behalf of Market Participants should be compensated accordingly.

However, organised market places, Trade-Matching-Systems, Trade-Reporting-Systems and Trade Repositories expressed that the requirements should be the same for all reporting entities. Concerning the validation of input, they indicated that third-party RRM may not have the means to identify omissions and obvious errors.

Some respondents considered 5 days too short to produce disruption reports and suggested to add a requirement that RRM shall inform Market Participants in case of disruption or breach. The RRM should be responsible for troubleshooting and solving the first validation issues or any other issue within their control following an error message from ACER.

ACER's view

The Agency believes that Article 11 of Commission Implementing Regulation (EU) No 1348/2014 has already clarified several of the issues raised in the responses received. The Agency has reviewed the RRM requirements in the light of the responses received and will apply the criteria in a proportionate way as described in the final version of the RRM requirements. Self-reporting Market Participants, the ENTSOs, TSOs, SSOs and LSOs will benefit from lighter requirements during the registration process. Concerning the reporting on request of the Agency according to Article 4 of Commission Implementing Regulation (EU) No 1348/2014, a No-Action Relief Staff Letter was issued on 8 January 2015.

Question 6

Notwithstanding the requirements on the validation of output (see Chapter 5.6), should the Agency offer to entities with reporting responsibilities the possibility to request access to the data submitted on their behalf by third-party RRMs?

Question 7

If the reply to question 6 above is positive, please explain how such access should be granted, taking into consideration the need to ensure operational reliability and data integrity.

Respondents' feedback on questions 6 and 7

Several respondents suggested that ACER should provide Market Participants with the possibility to have access to all / samples of data reported by third-party RRMs. Access should be granted by applying same IT and security measures as used for data reporting. A number of respondents stressed that careful consideration should be given to the confidential nature of the information.

Some respondents preferred, however, an access only through RRMs.

ACER's view

The Agency believes that Market Participants should prefer such RRMs offering reconciliation services to Market Participants subject to the contractual arrangements between Market Participants and RRMs. However, the Agency is still considering to offer the possibility to request access to the data submitted through third-party RRMs from the Agency and will inform about this possibility in due course.

Question 8

Do you agree that the compliance report must be produced by the RRM on a yearly basis or shall such report be compiled only at the request of the Agency?

Respondents' feedback

The majority of respondents is in favour of compliance reports, but some stress they should only apply to third-party RRMs. Concerning the frequency of the reports, responses vary between annual, every three years, at the request of ACER and a risk-based approach.

Respondents had divergent opinions on external audits. Some suggested compliance points instead of an audit plan. In general, there was, however, agreement that the main findings should be published by ACER or made available to Market Participants by the RRM.

ACER's view

In the light of the responses received, the Agency will only require compliance reports and certified compliance reports on a request basis. At the request of the Agency, RRM shall produce a compliance report describing how the RRM met the technical and organisational requirements in the period indicated in the Agency's request.

The Agency may request that the report on the performance of RRM related activities is produced and certified by an independent information systems auditor on the basis of an audit plan produced by the Agency. The Agency believes that certified compliance reports are an effective way to assess whether a RRM complies with the requirements. The Agency intends to request such certified reports to a sample of RRM every year using a risk based approach. The Agency will publicly consult on the audit plan before issuing any such request.

The Agency will ensure a proportionate treatment of the different categories of reporting parties.

Question 9

Do you agree that trade repositories and ARMs shall be registered with the Agency, even if they only report data reportable under EMIR and / or other relevant financial market legislation?

Question 10

Do you agree that the Agency should foresee a simplified registration process for trade repositories and ARMs that only report data reportable under EMIR and / or other relevant financial market legislation?

Question 11

Do you agree that CEREMP should be used for the identification of market participants that apply to become a RRM?

Question 12

What is your opinion on the timeframe needed to complete the registration process?

Question 13

Do you have any comments on the registration process in general?

Respondents' feedback

The Trade Repositories responding to the public consultation were in favor of a lighter registration process. The ESMA registration should be carried over or at least substantially satisfy the registration process.

Most respondents were in favor of using CEREMP for the registration of self-reporting Market Participants. However, many respondents stressed the flexibility needed to allow Market Participants to change their status, the need to ensure that registration at national level is open before deadline prescribed by REMIT (which may not be the case for all NRAs) and considered ACER's technical support crucial to smooth the registration process.

Some respondents believed that all documents showing evidence of compliance with the requirements should be provided at the stage of registration.

With regard to the timing of the registration, most respondents argued that the envisaged timeframe of 3 months is too short and considered six to nine months needed based on the EMIR experience. Some argued that three months is too long and that there would not be enough time for RMMs to implement the IT system and conclude DRAs before the reporting obligation starts. Some respondents argued that the reporting obligation should kick-off only once RMMs have been registered (same as under EMIR) and the need to define more clearly and in detail the steps of the registration process, e.g. on how ACER will give feedback to RRM applicants and in which timeframe.

As regards testing, some respondents thought that different RMMs may be ready at different times and that they should be given more chances to test, that there should be the possibility for applicants to apply more than once and, in general, that more details on testing should be defined and provided in advance.

ACER's view

The Agency welcomes the feedback received

Question 14

Would the periodic renewal of registration be a valid alternative to the certified annual report?

Question 15

Do you have any other comments on the Chapter concerning the Agency's assessment of compliance with the RRM requirements?

Respondents' feedback on questions 14 and 15

A vast majority of respondents was against the periodic renewal of registration as a RRM.

Concerning the evidence of compliance with the requirements, respondents in general believed that all documents showing evidence of compliance with requirements should be provided at the stage of registration. It should, however, be clarified whether ACER will assess the content of the documents and what will be the consequence for RMMs if ACER considers that the requirements are not met.

Regarding the procedure leading to the potential deregistration of RRM, some respondents saw the need to define in more detail the notion of “decrease in data quality”. In general, respondents believed that the procedure should be defined in detail in order to protect Market Participants and suggested that warnings on decrease on data quality shall be made available to Market Participants and that Market Participants should receive at least six months to find another RRM (two months is too short).

ACER's view

The Agency appreciates the feedback received. In the light of the responses received, the Agency for the time being skipped the requirement for renewal of registration.

The Agency will require the relevant documentation showing evidence of compliance with requirements at the stage of registration at the attestation stage of the registration process. The Agency will, however, only examine the completeness of the documentation provided during the registration process and not enter into an examination as regards contents.

With regard to the procedure leading to the potential deregistration of RRM, the Agency will inform the market participant associated to third-party RRM before discontinuing access. This information will be provided at least six months in advance, in order to allow market participants to make reporting arrangements with another RRM. In exceptional circumstances when the Agency would establish that a RRM is in serious breach of its obligations described in this document that could result in the significant risks to overall security, availability or operational reliability of ARIS, the Agency reserves the right to temporarily suspend access to ARIS until the breach is resolved and compliance with the RRM requirements is ensured.

Annex 1 – ACER

The Agency for the Cooperation of Energy Regulators (ACER) is a European Union body established in 2010. ACER's mission is to assist National Regulatory Authorities in exercising, at Community level, the regulatory tasks that they perform in the Member States and, where necessary, to coordinate their action.

Regulation (EU) No 1227/20112 on Wholesale Energy Market Integrity and Transparency (REMIT) has introduced new rules prohibiting abusive practices affecting wholesale energy markets. According to REMIT, ACER has to collect both transactional and fundamental data necessary to monitoring of wholesale energy markets, in close collaboration with national regulatory authorities (NRAs), in order to detect and deter market abuse.

This report was prepared by ACER's Market Monitoring Department competent for REMIT implementation and operation.

Annex 2 – List of Respondents

No.	Respondent	Type	Country
1	Stadtwerke Munchen (SWM), Bayerngas GmbH, EWEW Aktiengesellschaft, Verbundnetz Gas Aktiengesellschaft	Association of market participants	Germany
2	Chicago Mercantile Exchange Group	Market participant	US
3	DTCC's European Trade Repository Limited (DDRL)	Trade repository	Belgium
4	Energy Commodity Traders Group (ECT-Group)	Group of market participants	Germany
5	EDF Group	Market participant	France
6	European Federation of Energy Traders (EFET)	Association of traders	Europe
7	ELEXON Ltd	Service provider	UK
8	EnBW	Market participant	Germany
9	Enegas	Market Participant	Spain
10	ENTSO-E	European association of electricity TSOs	Europe
11	ENTSO-G	European association of gas TSOs	Europe
12	ETR Advisory	Service provider	UK
13	Eurelectric	Association of market participants	Europe
14	Eurogas	Association of market participants	Europe
15	Europex	Association of energy exchanges	Europe
16	Exxon Mobile	Market participant	US
17	Finnish Energy Industries	Association of market participants	Finland
18	Holding Slovenske elektrarne (HSE)	Market participant	Slovenia
19	ICE Tradevault Europe	Trade repository	UK
20	Oesterreichs Energie	Association of market participants	Austria
21	International Association of Oil and Gas Producers (OGP)	Association of market participants	International
22	OMV	Market participant	Austria
23	Statoil	Market participant	Norway
24	Verband kommunaler Unternehmen (VKU)	Association of local utilities	Germany
25	Xoserve	Service provider	UK