Comment of

to the

Public Consultation

Draft
REMIT

Transaction Reporting User Manual (TRUM)
Public consultation document

PC_2014_R_05

Bayerngas GmbH, EWE Aktiengesellschaft, HEAG Südhessische Energie AG, Mainova Aktiengesellschaft, MVV Energie AG, Pfalzwerke AG, PGNiG Sales & Trading GmbH, Stadtwerke München GmbH and VNG Verbundnetz Gas Aktiengesellschaft, are taking part in this consultation together as regional or local energy companies or trading platforms which fall under the requirements of REMIT.

1. **Please provide us with your views on the scope and the objectives of this document. In particular, please provide your opinion on whether the kind of information included and the structure of the TRUM are suitable to facilitate transaction reporting. If not, please explain which additional information the TRUM should cover and/or how it should be structured.**

   - The usability of the TRUM depends in particular of a clear distinction between standard- and non-standard contracts. Until date of the consultation this clear distinction is missing. It is of utmost importance that a clear definition is rendered.

     For market participants it is necessary, that a clear distinction is given to avoid parallel reporting channels. If for example a standard product is concluded at an exchange, this product could be reported via the exchange. The reporting services of the exchange would not be a benefit, if the market participants have to implement the same procedures for bilateral concluded deals.

     To give real benefit to the market the distinction between standard and non-standard should be:
     standard products are <u>only</u> those traded via organized market places (exchanges, MTF, broker) – everything else is considered as non-standard.

   - As explained in the consultation paper for the requirements for the registration of RRMs', it is important to have a clear understanding of who has to become a RRM. Until date of the consultation it is for example unclear who will be the RRM in case of a chain of reporting parties (i.e.: Party A will report not only for itself but as well for Party B concerning those contracts concluded together. Party A will then engage a third party fulfilling the reporting obligations to ACER for party A and party B.) In our perception party A will not be a RRM and does not have to fulfil the preconditions as RRM will have to.

   - These uncertainties are especially problematic vis-à-vis the proposed high level requirements for a RRMs. These requirements would in case of a reporting-chain lead amongst others to the situations that those parties who are not able to fulfil the requirements (especially small and medium-sized companies) lose market shares. Already today clients ask their energy supply company if they are willing to take over the reporting-obligation for contracts concluded between them or even concluded

with a third party. In case the energy supply company is not able to, the clients search for a new supply company who will report for them.

2. **Please provide us with your general comments on the purpose and structure of the draft TRUM. In particular, please provide your opinion on whether the information the Agency intends to include in the first edition of the TRUM is sufficient for the first phase of the transaction reporting (contracts executed at organised market places). If not, please explain which additional information should be covered.**

As we read the question, ACER wants in the first phase of reporting ONLY contracts executed at organized market places to be reported (expression in brackets). We welcome this very much an a think this necessarily leads to necessitiy to clearly define standard contracts a contracts traded via organized market places (see comments under 1 and 3).

3. **Please provide us with your views on the Agency's proposed approach as regards the list of standard contracts. In particular, please provide your views on whether:**
   • **the list of standard contract types enables reporting parties to establish whether to use Table 1 or Table 2 of Annex I of the draft Implementing Acts when reporting information under REMIT; and**
   • **the identifying reference data listed in ANNEX II to be collected by the Agency would be sufficient and suitable to establish the list of standard contracts.**

   Do you agree that the list of standard contracts in Annex II should also be considered sufficient to list the organised market places or would you prefer to have a separate list of organised market places? Please justify your views.

As already mentioned in the answer to question one, the distinction between standard- and non-standard contract has to be clarified in a way that makes it easily applicable. If the wording "admitted to trading at an organized market place" remains unchanged, the parties always have to check, whether their bilaterally concluded contract could be traded as well somewhere on an organized market place. This is neither practical nor a helpful distinction for an automated system as needed for reporting. But in case the wording would be changed to "'standard contract' means a contract concerning a wholesale energy product traded at an organized market place, ~~irrespective of whether or not the transaction actually takes place on that market place~~ ", than the distinction would be clear and a system could differentiate automatically between standard and non-standard contracts.

If a contract has been identified as non-standard, the connected individual transactions have to be reported in the same way. That means that different reporting requirements can't be implemented. For example: According to point 3.6.1 ACER says: „Details of transactions executed within the framework of non-standard contracts specifying at least an outright volume and price shall be reported using Table 1 of Annex I." If this would be implemented, it could occur, that the contract at the basis of the individual transactions specifying the outright volume and price will be reported after the individual transaction, as the non-standard has to be reported after 30 days and the standard after one day. Non-standard contracts will not be reported earlier than 12 months after the adoption of the IAs. The

specification of a component of the price or a volume of a contract is not of much use as long as the master agreement is not yet reported because stand alone the economic circumstances can't be correctly estimated. In our view specifications introduced to a contract after its conclusion should be reported as modifications because this is the meaning this agreement has in the view of the counterparties.

Regarding the list of standard contracts in Annex II the standard contract types and subject of contract needs to be clarified. A least time needs to be defined for changes to the list in order to allow implementation resp. process changes.

4. **Please provide us with your views on the explanation of product, contract and transaction provided in this Chapter, in particular on whether the information is needed to facilitate transaction reporting.**

   No comment

5. **Please provide us with your views on the field guidelines for the reporting of transactions in standard supply contracts.**

   For this question we refer to the answer of the BDEW comment, which is the following:

   - *"Supply contracts (see 3.1.1) and §5) – we do not understand the contract quoted under 5) After-day contracts (p. 12)*

   - *Supply contracts (see 3.1.1) and §8) - we would need more clarity on this point, for example, are supply contracts of natural gas above 600 GWh for power plants included in the obligation? (p. 12)*

   - *Physical swaps & spreads are envisaged to be reported as two-leg transaction. This fact, however, creates the contradiction to the approach applied in EMIR reporting. The linkage via Linked Order/Trade ID is apparently complex for programming and brings additional cost when IT solution is designed.*

   - *More details of option styles shall be provided (at least "O" to quote any other styles). Our concern is how to report eventually exotic option styles (e.g. binary, barrier, window options, etc.). Furthermore, practical examples of option reporting shall be added in Annex III.*

   - *At the moment, not all of the transaction types are shown in examples with sufficient details (i.e. which fields are mandatory and which are optional). Therefore, mandatory/optional flag shall be quoted in field description.*

   - *Order to trades: are they supposed to be reported as part of the transactions or separately? Also, some examples of orders in Annex III are welcomed.*

   - *There is no field defined as "internal contract identifier". This is very important because it allows us to ensure the traceability of the contract reported with internal systems. It is used also in EMIR.*

- *We believe it is crucial to minimise the amount of interpretation that RRMs can apply in submitting data in data fields. The less choice of data options the better the chance of trades being matched, unless it is clear a certain field/ fields are the minimum that must be matched*

- *Linked to the previous point, we would like ACER to clearly define what is the minimum data that is needed to match trades? Is there one particular field/ a small number of fields that must match before a trade is considered matched? Are the fields indicated at the back of the TRUM the minimum fields that must be completed?*

- *Some standard (and non-standard) contracts can have very complex pricing formulas (index, baskets), including more than one index from different markets (power, transfer capacities, gas, oil, aluminium and other metals, different commodities, etc), price caps and other nonlinear mathematical function in their definition. For such transaction, there is no way to report them through existing fields 32, 33 and 34. For such transaction, those fields should be left blank.*

Comments on specific data fields:

Data Field no. 3 (Trader ID as identified by the organised market place and/or for the market participant or counterparty): Not clear how to populate the value for bilateral contracts traded off-organised market places. We believe that Trader ID should not be mandatory for "off-organised" market places. The value "a12345" is not explained properly.

Data Field no. 8 (Beneficiary Identification): ACER could give further guidance what to do with the "Beneficiary" field. When a market participant A does a deal based on the common need of market participants B, C and D on a market place, it is impossible for the market place to have information of B, C and D. It would be welcomed if ACER could clarify exactly when the beneficiary field is expected to be used. (A common case is when there is a jointly owned power plant and there is some left-over electricity that needs to be put in the market, typically a small intraday-trade. It would be welcomed if ACER could clarify that the beneficiary information is irrelevant and the field can be left empty). In our view, a done currently under EMIR, we believe that the beneficiary field should be populated only if the transaction is traded on behalf of a third company. Otherwise it is not possible to populate this field.

Data Field no. 11 (Buy/sell indicator): In the description it is mentioned that, in some cases, where order is neither buy nor sell, value "BS" should be reported, however this is not valid since reserved field length is just 1 character.

Data Field no. 12 (Initiator/Aggressor): Not clear distinction between Initiator and Aggressor. Deeper explanation needed.

Data Field no. 25 (Contract name): We consider this field as odd due to the fact that all needed information about the contract identification is already stated in other fields. We consider field no. 27 (UTI) as more important and relevant for contract identification. At the same time we understand that this field was included by ACER to follow EC IAs.

Data Field no. 26 (Contract Trading Hours): We consider this field as odd due to the fact that this is a characteristic of the product in organized market place and not a characteristic of the contract. The information could be retrieved from organised market places operational instructions. At the same time we understand that this field was included by ACER to follow EC Implementing Acts.

Data Field no. 28 (Linked Transaction ID): Comments regarding scenario 1 (trade occurring across multiple products): Most deal capture systems do not allow you to link both transactions which are booked separately and additional IT developments and investment would needed to link these in the future. By trading a spread on an organised market place, it is split by the organised market place in several products in the moment of trade execution. It is just a service to show the trades in one spread contract otherwise the market participant would have to "construct" this on its own. The overall risk profile and price is important not really how it is booked.

Data Field no. 34 (Index Value): We find the description very confusing. Is this fixing price, price spread or index multiplier? Furthermore, in many cases the value of the index is not known in the moment of closing the trade. Should we introduce the last known index value? We would need more clarity and examples. If this implies coordination with counterparties, it could be a massive burden for market participant.

Data Field no. 40 (Quantity unit for fields 38 and 39): The unit in both fields no. 38 and no. 39 will always differ since field 38 represents power and field 39 represents energy.

Data Field no. 42 (Last trading date and time): It has no sense to ask this information since this is a characteristic of the product in organized market place and it is not a characteristic of the contract.

Data Field no. 51 (Duration): This field is redundant since it does not hold any relevant information. Furthermore, the admitted values are QH= Quarter Hour; HH = Half Hour; H= Hour; D= Day; W= Week; M =Month; Q = Quarter; S= Season; Y= Annual. We miss products as week end, balance of week, balance of month. They should be added or just it in case introduce an "other" value

Data Field no. 53 (Days of the week): It might be difficult to implement for many market participants (depending on their IT system). It would be recommended to omit this field and more generalized approach, utilizing fields 54, 55 and 57, should be used."

6. **Please provide us with your views on the examples of transaction reporting listed in ANNEX III of the draft TRUM. Do you consider the listed examples useful to facilitate transaction reporting?**

At the exchange examples in Annex III /examples of transaction reporting different UTIs are used. Within the framework of EMIR the same UTI is used for both parties. One of the important goals of REMIT is to avoid divergences in the processes for the implementation of both regulations. For both REMIT and EMIR the same IT-infrastructure is used. Therefore it is not constructive, if different UTIs have to be generated when market participants have to report their REMIT-data, while they have to use uniform UTI's to report the EMIR-data.

Regarding the UTI there should only be in our point of view one number for ESMA and ACER. This number is distributed by the platforms for standard contracts and is then used uniformly.

Examples:
- Futures: The number is generated by the Clearing bank (not by the exchange), the energy companies take it over
- Standards traded on platforms : the number is generated by the platform, the energy companies take it over
- The rest is handled bilaterally; for EMIR who generates the UTI is agreed upon in an annex to the contracts. (See ISDA best practice approach as an example)

Although we welcome the fact that a consistency check has already been made between the requirements of ACER for REMIT and the ones of ESMA for EMIR there is still additional work to do in this field. The comparison of the reporting details makes it clear that the two authorities have to cooperate even more closely on this subject, as the definitions of the EMIR details are in many cases slightly different from those proposed by ACER. Further ESMA asks for more details than ACER. This will lead in the worst case to the necessity of double reporting, for example if a decision is made, that either ACER or ESMA is the leading data platform for all data but none of them can fulfil the tasks for the other.

Below we listed inconsistencies in the examples given in Annex III. From our point of view the list shows that some more information has to be given.

- In the examples the time is generally parameterised with Z (=UTC) so that the examples are about trades in UK as only in UK the time "Z" is used. The examples contains incoherent date regarding contracts/products, Delivery Start Date and timeframe: I.e. in the trading scenario n° 3.5: As "Z" is used, it describes a trade in UK; the British Base has the timeframe 23:00Z/23:00Z, but the Load Delivery interval is specified with "00:00Z/24:00Z. The timeframe 00:00/24:00 (without "Z") is the German Base. Furthermore if it was a British Base, the Delivery Start Date in the

example 3.5 should be 2014-07-31 as it starts one hour earlier (23h), than the German Base (00:00h).

- **Trading Scenario n. (1.1): Electricity hourly contract traded on an Auction Market**

  Field n° 22: SPO isn't defined. We would have assumed that ACT should be used.

- **Trading Scenario n. (1.2): Electricity block contract traded on an Auction Market (exchange).**

  Field n° 22: SPO isn't defined

- **Trading Scenario n. (1.3): Electricity day-ahead contract traded on an Auction Market (exchange).**

  Field n° 39 / MP2: this field contains an arithmetic error: it has to be "240" instead of „0"

  Field n° 51 / 52: from field 22 = FW arises that this example is about day trades without choice on single hours, therefore the fields 51/52 have to be fulfilled with "D" (Day) instead of "H" (Hour)/field 51 and "B" (Base) instead of "H" (Hour)/field 52.

- **Trading Scenario n. (2.1): Electricity hourly contract traded on a Continuous Market (exchange).**

  Field n° 22: SPO isn't defined

  Field n° 27: Regarding exchanges the UTI always has to be different

- **Trading Scenario n. (2.2): Electricity block contract traded on a Continuous Market (exchange).**

  Field n° 22: SPO isn't defined

  Field n° 27: Regarding exchanges the UTI always has to be different

- **Trading Scenario n. (2.3): Electricity day-ahead contract traded on a Continuous Market (exchange).**

  Field 27: Regarding exchanges the UTI always has to be different

  Field n° 51 / 52: from field 22 = FW arises that this example is about day trades without choice on single hours, therefore the fields n° 51/52 have to be fulfilled with "D" (Day) instead of "H" (Hour)/field n° 51 and "B" (Base) instead of "H" (Hour)/field n° 52.

- **Trading Scenario n. (2.4): Gas within-day contract traded on a Continuous Market (exchange).**

  Field n° 27: Regarding exchanges the UTI always has to be different

  Field n° 38/39 Gas is traded in MW and not in daywork (MWh/d). Acer should be conform with the product taxonomy (EMIR) and not implement additional products. Otherwise the data reporting isn't consistent with the product template and the confirmation

- **Trading Scenario n. (2.5): Gas day-ahead contract traded on a Continuous Market (exchange).**

  Field n° 27: Regarding exchanges the UTI always has to be different

  Field n° 38/39 Gas is traded in MW and not in daywork (MWh/d). Acer should be conform with the product taxonomy (EMIR) and not implement additional products. Otherwise the data reporting isn't consistent with the product template and the confirmation

  Field n° 51: "O" isn't defined

7. **In your view, are there any additional examples to be added in ANNEX III of the draft TRUM? Please provide a description of example(s) that in your opinion should be covered.**

   In Annex III the description of the given examples lacks the information about which exchange and which product is meant. To reach a high usability of the TUM it is important to describe the examples as concrete as possible.

8. **Please provide us with your views on the field guidelines for the reporting of transactions in non-standard supply contracts.**

   It seems sometimes as if the guidelines for non-standard contract have been copied from the standard guidelines:

   - Data field n° 3, paragraph 2 and 3: - bilateral trades that take place on a broker platform are standard contracts and not non-standard. It is the same if it takes place on an energy exchange.
   - Data field n° 7, paragraph 4.

9. **Please provide us with your views on whether examples of transaction reporting should be added as regards transactions in non-standard supply contracts. If yes, please explain which scenarios these examples should cover.**

   No comment

10. Please provide us with your views on the field guidelines for the reporting of transactions in electricity transportation contracts.

No comment.

11. Please provide us with your views on whether examples of transaction reporting should be added as regards transactions in electricity transportation contracts. If yes, please explain which scenarios these examples should cover.

No comment.

12. Please provide us with your views on the field guidelines for the reporting of transactions in gas transportation contracts.

No comment.

13. Please provide us with your views on whether examples of transaction reporting should be added as regards transactions in gas transportation contracts. If yes, please explain which scenarios these examples should cover.

No comment.

14. Do you agree that, if organised market places, trade matching or reporting systems agree to report trade data in derivatives contracts directly to the Agency they must do so in accordance with Table 1 of Annex I of the draft Implementing Acts as regards contracts referred to in Article 3(1)(a)(9) and Table 3 or 4 as regards contracts referred to in Article 3(1)(b)(3)?

15. In your view, are Tables 1, 3 and 4 of Annex I of the draft Implementing Acts suited for the reporting of contracts referred to in Article 3(1)(a)(9) and Article 3(1)(b)(3) respectively?

Answer to question 14+15:
Under Point 8 ACER states the following: "information on derivatives reportable under EMIR and [MiFIR] may either be made available to the Agency in the EMIR / [MiFIR] format or reported directly to the Agency in the REMIT format." According to article 8 III REMIT persons who report transactions in accordance with EMIR shall not be subject to double reporting obligations relating to those transactions, all reported transactions according to EMIR count as reported according to REMIT.

This means, that if a transaction is reported according to EMIR, there is no obligation left to report this transaction again under the REMIT regime. The basic understanding of REMIT and EMIR is to avoid double reporting for the market participants. Therefore we strongly point out, that there is no obligation for the market participants to report the data to ACER regarding the data that are already reported under EMIR to ESMA (neither in the EMIR format nor in the REMIT-format). In fact ACER should arrange the data sharing with ESMA and collect the reported data directly from ESMA. ACER has to abstain from the data already reported under EMIR to ESMA and the according data fields have to be deleted.