

# ACER public consultation on draft REMIT Requirements for the registration of Registered reporting Mechanisms (RRM)

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A EURELECTRIC response paper

September 2014

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*We speak for more than 3,500 companies in power generation, distribution, and supply.*

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***Carbon-neutral electricity by 2050***

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

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Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment to** ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

***EURELECTRIC. Electricity for Europe.***

# ACER public consultation on draft REMIT Requirements for the registration of Registered Reporting Mechanisms (RRM)

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## KEY MESSAGES

- EURELECTRIC welcomes the efforts made by ACER to come up with robust and prudential rules for the registration of Registered Reporting Mechanisms (RRMs).
- EURELECTRIC does not agree with ACER's view that the same requirements shall apply to all RRM. EURELECTRIC indeed believes that the REMIT RRM requirements document needs to deal with the option to have a separate registration – with lighter specifications – for market participants reporting on their own transaction and/or regulated information (“self-reporting entities”) in order to avoid additional compliance costs and administrative burdens.
- EURELECTRIC also believes that ACER should develop a much lighter set of requirements for ad-hoc reporting under Article 4 of the draft REMIT Implementing Acts when data is required very infrequently. Asking for the full RRM requirements would cause an unnecessary burden on reporting entities who only undertake such ad-hoc reporting.
- EURELECTRIC cannot see how trade reporting systems and trade matching can report lifecycle events of on-platforms trades reported by the organised market places (OMPs); as in most cases they do not necessarily have this information available. Further clarification is needed on the handling of lifecycle events reporting for standard contracts executed over an OMP. A workable solution should be found and should not require additional costs or efforts from market participants.
- EURELECTRIC supports ACER's view that the obligation to produce a compliance report should be on a yearly-basis for OMPs and for trade matching / reporting systems. However, we strongly disagree that self-reporting entities should prepare a compliance report on an annual basis, and even more to have it certified by external auditor. In our views, a request should be reasonable and justified and limited to occurring intermittently e.g. every 3-5 years.
- Requirements for registration of RRM are quite extensive. Therefore we do not think that three months are sufficient time to fulfil all requirements for RRM registration.

**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?**

*No. We cannot see how trade reporting systems and trade matching can report lifecycle events of on-platforms trades reported by the OMP; as in most cases they do not necessarily have this information available; e.g. in case of a bi-laterally agreed modification to the trade between the counterparties without intervention of a third party.*

*Indeed, the data fields "confirmation timestamp" and "confirmation means" require post-trade modifications for all trades which are not concluded via exchanges (where no confirmation is issued) as it is not possible in general to confirm the trades by end-of-day. If the contract has been reported via organized marketplace the requirement to report post-trade events via trade matching or trade reporting systems is not feasible. There is no link between the trade (and the order) which is available in a reporting system. This would mean that the link would have to be established by also transferring the information to the reporting system. In addition to this the market participant needs to submit the information regarding confirmation to the reporting system. It should be mentioned that a part of confirmations is exchanged manually, especially with smaller counterparties and is not available to trade matching systems. The market participants would have to set up two different reporting (and verification) processes which leads to very high operational and technical complexity and costs.*

*Under EMIR most market participants report their contracts themselves to the trade repository or use the reporting service of their counterparty and hence are not faced with this problem.*

*Due to the issues described above, market participants are extremely concerned about the practical implementation of reporting post-trade events of trades which are originally reported by the OMPs, which cannot easily be done by a party other than the market participant. If the latter should report, it will be very cumbersome, complex and cost consuming to implement a reporting solution taking into account that the original trade is reported by the OMP (and these data are not duplicated in the market participant' systems).*

*Therefore, we once more stress the importance of market participants having the choice to report both the trade concluded over the OMP and the lifecycle events thereof directly to the ACER, without mandatory obligation to OMPs whilst complicating if not rendering impossible lifecycle event reporting. Furthermore, we are of the opinion that most of the potential questions connected to this issue could be avoided if the data fields "confirmation timestamp" and "confirmation means" would be deleted.*

*Other modifications which require post-trade events, e.g. early terminations, novations to a different counterparty etc. occur much less frequently. They should be realised either via the organised market place or by the counterparty itself. Requirement for the latter is an adequate interface provided by ARIS, without the need for market participants to apply to*

*become an RRM purely in order to satisfy the reporting obligation in respect of post-trade events.*

- 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 ARMs for the reporting of data covered by EMIR and / or other relevant financial market legislation? If not, please justify your position.**

*First of all, we think that no additional requirements should be given to these undertakings to ensure smooth process of registration and reporting. We think that standards and formats used in EMIR reporting are well established and should be sufficient. Once new formats and standards will be used for REMIT reporting, it could bring additional administrative and financial burden on them. Consequently, it could influence the service provision regarding EMIR reporting, even more to make EMIR reporting more expensive as a consequence of these new formats and standards. In other words, we would not want obligations being put on trade repositories that could ultimately affect the reporting channels market participants have in place with such trade repositories/ARMs.*

- 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?**

*We support ACER's effort to set up robust and prudential rules for RRM, but we would have expected ACER to add a provision requiring RRM acting as a third party to also inform the person for whom it reports (and not only the Agency), in case of disruption of services or security breaches.*

*While we support RRM requirements in general, we however do not agree that all requirements should be applied for all reporting entities, regardless of whether they report their own data or third-party data.*

*In fact, we consider these requirements very strict especially for companies, who decide to report by themselves or on behalf of their group members. We do not consider that such strict requirements are needed for these market participants especially given that during the registration process market participants will have to fulfil testing requirements. The most important step should be to pass the test and not the procedures and documentation around that. Already REMIT legislation gives strict penalties and enforcement, if market participant do not comply with reporting obligations in a complete and timely manner. The reporting testing could be for these market participants the sole and most important condition for passing the registration process. The requirements (especially the yearly compliance report) are going well beyond what is necessary. At the same time under such timeframe for registration, it is very challenging even impossible to fulfil all these requirements. It brings huge administrative burden and will require*

*additional costs for compliance. In addition, if market participants are also certified, this should be also taken into account.*

*In addition, we believe that ACER should develop a much lighter set of requirements for ad-hoc reporting under Article 4 of the draft REMIT Implementing Act when data is required very infrequently, or perhaps never. The full RRM requirements are an unnecessary burden on reporting entities who only undertake such ad-hoc reporting.*

*For further details, please see our answers to question 4.*

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

*As mentioned above, we do not agree with ACER's view that the same requirements shall apply to all RRM's. EURELECTRIC indeed believes that the REMIT Registered Reporting Mechanisms requirements document needs to deal with the option to have a separate registration – with lighter specifications – for market participants reporting on their own transaction and/or regulated information (“self-reporting entities”) in order to avoid additional compliance costs and administrative burdens.*

*We believe that a light version should be set up for RRM's reporting on their own behalf only and on behalf of their group members as data corruption in this case is lower and even if it occurs it would only affect a limited number of market participants (contrary to an organised market place or a trade matching system). If a light regime is not offered, it would increase the compliance costs and the administrative burden.*

*In this lighter version of RRM requirements, we believe that it should not be necessary to have an annual external audit; one could consider to have such an audit on request (e.g. maximal every 3 years).*

*As regards responsibility for reporting data, EURELECTRIC welcomes the clarification brought by ACER and notes that where the reporting is done by a third party on behalf of a market participant then “the person [market participant] shall not be responsible for failures in the completeness, accuracy or timely submission of the data which are attributable to the third party. In those cases the third party shall be responsible for those failures.” However, we do consider that asking a market participant to “take reasonable steps to verify the completeness, accuracy and timeliness of the data” submitted by third parties on their behalf is inconsistent. Therefore EURELECTRIC would welcome a clear framework with legal and contractual guarantees for market participants' vis-à-vis their chosen RRM.*

*Furthermore, we believe that ACER should develop a much lighter set of requirements for ad-hoc reporting under Article 4 of the draft REMIT Implementing Act when data is required very infrequently, or perhaps never. Indeed, the latest draft of the REMIT Implementing Act (dated 8 July 2014) Article 4 states that*

*“Unless concluded on organised market places, individual transactions in relation to the following contracts shall be reportable only upon reasoned request of the Agency:*

*(a) Intragroup contracts,*

*(b) Contracts for the physical delivery of electricity produced by a single production unit with a capacity equal to or less than 10 MW or by production units with a combined capacity equal to or less than 10 MW,*

*(c) Contracts for the physical delivery of natural gas produced by a single natural gas production facility with a production capacity equal to or less than 20 MW,*

*(d) Contracts for balancing services in electricity and natural gas.”*

*Therefore such contracts are only reportable on an irregular basis and perhaps very infrequently. The draft Implementing Act and the supporting ACER documentation are not explicit on how such ad-hoc reports shall be made to ACER. But, we note that Section 2.3 of the consultation states that: “The requirements will apply to any person reporting trade and/or fundamental data”. To us this can be read to imply that the full RRM requirements will include any person undertaking ad-hoc reporting of trades as foreseen by Article 4 of the draft REMIT Implementing Acts.*

*We believe that the full RRM requirements for regular reporting should not be applied to the irregular reporting foreseen under Article 4 of the draft Implementing Act. The full RRM systems and procedures are unjustified by the cost and benefit, so we suggest a different, much lighter touch, approach is needed for Article 4 reporting and, particularly where the data requested by the Agency is already in the public domain, the RRM approach may not be required at all.*

*At this stage, we suggest that the first implemented version of the document “Requirements for the registration of Registered Reporting Mechanisms (RRM)” should explicitly state that: “These RRM requirements do not apply to those persons who only report contracts within the scope of Article 4 of the REMIT Implementing Acts, i.e. where such contracts are reportable to the Agency only at the reasoned request of the Agency. The Agency will develop the requirements for the reporting of such contracts at a later stage.”*

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

*If a reporting entity has only to provide data on the reasoned request of ACER under Article 4 of the draft REMIT Implementing Act, it should not be required to be an RRM in respect of such data.*

*And if a reporting entity has only to provide data which is required to be, and is already, placed in the public domain, then consideration should be given to less strict security requirements/using a different reporting route.*

- 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 RRM's?**

*First of all, we believe that once a market participant decides to report through a third party RRM, this RRM should be fully responsible for the completeness, accuracy and timeliness of the data sent. At the same time, in case the market participant notices or suspects some inconsistencies or in case the market participants experience difficulties in getting the data from a third party, it would be indeed beneficial for the entities to have access to these reports. But the key element for market participants is to receive confirmation from RRM that all transactions and orders have been submitted. However this would qualify as a delivery receipt and by no means represents a validation of the output by the market participant (as the title of paragraph 5.6 could apparently imply).*

*To allow an RRM to confirm that all transactions and orders have been submitted, it will be necessary for the technical setup of ARIS to be modified. The diagram of ARIS in the draft TRUM suggests that only rejections will be notified and this will be done via email.*

*It is important that both acceptances and rejections are notified by ACER to the RRM and that the web-services are changed to operate two ways to allow the communication from ACER to be sent down this channel. Without the above changes, it will not be possible to know if there is a connection error or outage at the time of sending the data and it will also not be possible to automate the re-sending of failed trades.*

- 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.**

*This could be done in a way that the entity will have access to reports sent by a third party RRM or to the database of ACER (the entity could be identified by its ACER code and create its own account).*

- 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?**

*We agree with ACER that the obligation to produce a compliance report should be on a yearly-basis for organised market places and for trade matching / reporting systems. We believe that compliance report is an effective way to ensure continuous quality of RRM's. Further on, we expect that ACER will publish main findings from RRM's compliance reports. It will bring additional value to transparency of energy industry.*

*However, we strongly disagree that self-reporting entities should prepare a compliance report on an annual basis, and even more to have it certified by external auditor. This seems like an onerous obligation and would indeed unnecessarily increase the compliance costs. Furthermore, we would like to stress that this obligation is not imposed by the primary and secondary legislation. RRM's performance can be evaluated from the daily*



reporting, e.g. how timely the reporting of trade is done, how many transaction reports are accepted or rejected after ARIS validation process, etc., and not necessarily by the “comprehensiveness” of yearly compilation reports. Last but not least, we emphasize once again that REMIT obligations and potential enforcement sanctions are clear and enough to motivate market participants to be fully compliant with REMIT.

In our views, a request should be reasonable and justified and limited to occurring intermittently e.g. every 3-5 years. The ACER audit plan must be transparent and consulted on (also due to cost concerns).

If reporting entities are only reporting ad-hoc data under Article 4 of the draft REMIT Implementing Acts, then a report should not be automatically requested each year, but only at the request of the Agency for such reporting entities and then only if such an entity has actually been requested to provide data by the Agency during the requested compliance reporting period.

Finally, a reasonable amount of time (as opposed to it being “immediate”) should be given for RRM, particularly companies reporting on their own/ group’s behalf, to provide a report on security breaches and steps taken to correct it.

- 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?**

Yes, we do agree. We think that they should register as any other market participant, but once they have been authorized by ESMA no additional requirements should be given them.

- 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?**

See answers to questions 2 and 9.

Yes, we agree. We expect that ARMs and TRs, already authorised by ESMA under MiFID or EMIR respectively, shall automatically fulfil all Agency’s requirements on RRM.

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

Yes, we agree. However, we would like to stress that, it might not be fully clear yet during the registration process whether a market participant would like to report data directly or via a third-party RRM. In the second case, it might also not be fully clear yet which RRM the market participant will choose. For those reasons, it should be very easy to change any data or status in CEREMP, when market participant decides to change their status.

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

*Generally, requirements on RRM for registration are very extensive. We understand that this will consume a lot of time on both sides. Therefore we do not think three months are sufficient time to fulfil all requirements for RRM registration, despite of fixed period (3 and 6 months) defined by REMIT.*

*We thus strongly advise ACER to soften the RRM requirements for self-reporting RRM (or RRM reporting on behalf of its group members). We really consider that the only and most important condition is to pass the reporting test. Because once an entity passes the test, it means that this entity applies all necessary measures to ensure smooth reporting process. And once again, REMIT itself motivates market participants to be fully compliant with registration and reporting obligation. This suggested approach would be in line with the practical implications of EMIR reporting (i.e. counterparties reporting directly to a trade repository are not required to comply with RRM-type requirements, but are required to complete testing before they are able to access production environments). In addition, we consider it important that market participants are not subject to such stringent RRM requirements where they reports only for themselves or on behalf of group companies, given that ACER envisages circumstances in which market participants will need to report directly to ACER (i.e. in respect of standard contracts that are concluded outside an organised market place).*

*We believe that RRM Technical specifications should be available to potential RRM (this includes also market participants) well in advance before registration starts, otherwise it will be very challenging to set up all the systems according the requirements in such a short time. This is underpinned especially due to the fact the very strict RRM requirements are envisaged by ACER. According ACER's proposal, the technical specifications are supposed to be available once the non-disclosure agreement is signed during registration process. We would like to remind the difficulties experienced some months ago for EMIR reporting. Trade repositories were put under strong time pressure due to the fact that all necessary documentation was not available on time. The result was that systems were not properly set up on time and IT problems are still prevailing nowadays. To avoid this situation under REMIT reporting, we strongly advise ACER to make available well in advance the above mentioned Technical specifications.*

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

*The process should be as easy as possible not to put additional administrative burdens for market participants. Once market participant decides to report on behalf of itself or its group members, only the information according ACER decision 1/2012 should be required. At the same time the registration manual would be very welcomed.*

*We also believe that there should be a process that allows potential RRM that failed in the test phase to re-apply again.*

*Finally, we would like to raise concern whether transaction reporting process should be applicable after RRM registration approval process rather than in parallel with transaction reporting. This would make sense due to the fact that the market participants have to submit the information within the registration process which RRM(s) they will use. For comparison we would like to point out that transaction reporting under EMIR was applicable after approval of Trade Repositories.*

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

*We believe there is no need for periodic registration renewal if an RRM is regularly reporting without any issues. We also think that there is no need for certified annual compliance report. There should be at least a limit in the request for such report: e.g. if requested one year, such report should not be asked again for e.g. 3 years.*

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

*Regarding the proposal that if an RRM's quality of data diminishes, ACER can:*

- a) Warn the RRM and no less than 2 months later can discontinue the RRM's access to reporting if no improvement is seen*
- b) Inform market participant's associated to the RRM before discontinuing access at least 2 months in advance*

*EURELECTRIC requests more information on what would be deemed to be deterioration in the "quality" of data (e.g. a delay in submissions? Missing data fields?). Further, we believe that 2 months' notice to participants that their 3<sup>rd</sup> party RRM is no longer useable is not sufficient given the length of time it takes to contract new RRMs and the cost involved. Longer notice is necessary. We would also welcome more details on what happens to historical submissions of data belonging to market participants which 3<sup>rd</sup> party RRMs have submitted and the access we have to such information? Clarity on where ACER believes compliance sits in the meantime between when the RRM is warned and when the RRM's access is stopped, where market participants may have in good faith and under contract submitted information to be reported by the RRM on its behalf is also requested?*

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



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