02.09.2014

Response of EnBW Energie Baden-Württemberg AG to the ACER Public Consultation Paper on draft REMIT RRM requirements (PC_2014_R_06)

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?**

   We do have major concerns with the proposal that post-trade events related to wholesale energy products should be reported by trade matching or trade reporting systems. This concern is based on the fact that they do not hold any information in respect to transactions concluded on organised market platforms especially when it comes to post-trade information. Any post-trade modification would have to be reported in addition to a further system by the counterparties first in order to enable them to send the data to ACER. This would lead to a massive additional burden for market participants; in fact they would need to establish additional communication channels just to "inform" trade matching or trade reporting systems of any lifecycle event. As there already is communication between the brokers and the market participants there would be no need to establish an additional reporting path if post-trade events would also have to be reported by the organised marketplaces. At the same time it needs to be said that particularly the data fields "confirmation timestamp" and "confirmation means" (fields 58 & 59) do trigger the vast majority of post-trade modifications for those transaction that are concluded via brokers, i.e. off-exchange. Reason is that it is usually not possible to ensure a final trade confirmation by end-of-day (and not a requirement under EMIR for non-financial counterparties below the clearing threshold). Based on the above mentioned issues and the fact that ACER already has the means via ARIS to match the respective transactions, we propose to delete the data fields "confirmation timestamp" and "confirmation means" (i.e. fields 58 & 59). Furthermore, we propose to publish a definition of "post trade events".

   Also we would like to comment on the proposal made on p. 9 that orders that lead to EMIR-relevant transactions should also be reported under Article 6(1) REMIT. In our view this may cause major problems as organised markets that do hold this information which are usually not used for EMIR reporting, i.e. these systems do not report the trade information to the TRs under EMIR in their name on behalf of market participants. Under EMIR it is common practise that market participants report their trades to the TRs (also these concluded via market places) by themselves. Thus we believe that TRs are better suited to provide this information to ACER in order to avoid any double reporting or incomplete reporting.

   In respect to rules on reporting of fundamental data, it is also important to establish clear rules regarding the proposed service obligation of LSOs and SSOs; i.e. for market participants it would be an issue if these would not offer a delegated reporting service.

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.

   Generally yes; we do not believe that any additional requirements should be given to these undertakings to ensure smooth process of registration and reporting. We think that standards and formats used need to be defined as detailed as possible and published in order to minimise the uncertainty of market participants on how deals need to be reported and which logical rules (e.g. consistency checks, reconciliation checks) will be applied by the ACER database (see the 5.3 (c) of the draft RRM paper.

   In respect to the EMIR-relevant deals we would like to point out that the respective reporting is defined and should be sufficient (even though there is still optimisation work ongoing). Any new/additional format brings about additional burden and potential for errors and could also negatively affect the service provision regarding EMIR reporting.

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 that the requirements set out to ensure the efficient, effective and safe exchange and handling of information without imposing unnecessary burdens on reporting entities. However, we still believe that there should be a differentiation made depending on the degree of third-parties involvement. Thus, we think that if market participants choose to become a RRM themselves rather than using a third party RRM to submit transaction reports, a different degree of RRM requirements should be considered. This is particular relevant, if deals are submitted for the affected group companies through a "consolidated" central hub (e.g. trading unit) on group level. We agree that if a third party RRM provides the reporting as a service for clients, these clients and their data deserve highest degree of protection. In any case, we would like to stress that "only" the entity connecting to the ARIS system should be required to register as RRM. Another key aspect to be considered is the approach to be taken in respect to those data that only needs to be reported on request (Article 4 of draft IAs). It seems clear that it would be not appropriate to ask market participants having to comply with the full RRM requirements; i.e. there must be a specific reporting scheme developed for those cases (which in fact may never occur if no requests are made).

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

   As mentioned above, we do not fully agree that there should be only one unique set of requirement should be met by all RRMs. We believe that a light version should be set up for RRMs reporting on their own behalf only and on behalf of their group members. This should also be considered for those data that only need to be reported on request. If a light regime is not offered, it would increase administrative burden quite significantly. For this regime we believe that it should not be necessary to have an annual external audit. An audit every 3-5 years /only on request (with sufficient time period) should be sufficient. It also needs to be mentioned that in the course of internal audits this will be looked at anyways.

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

   See questions 3 & 4.

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?

   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. Certainly, this would not qualify as a validation of the output by the market participant.

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 third party RRM or to the database of ACER. E.g. a copy of the reports could automatically be sent to the market participants. However the market participants should not have the obligation to establish a full validation process.

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. However, for a "light touch regime" for those market participants that only report their own data or those on group level we believe that it should not be necessary to have an annual external audit. An audit every 3-5 years /only on request (with sufficient time period) should be sufficient. This also should particularly also apply for those cases where data only needs to be reported on request (Article 4).

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?

   In our view, there is no reason why this should not be the case. At the same time we would like to point out that this should be a simple registration process which does not cause any additional costs or requirements for TRs which may then be passed on to market participants. Furthermore, we would like to re-emphasize that no additional burden due to double reporting should be generated for market participants. Thus, data that have already reported according to EMIR or other financial market legislation should not need to be reported to ACER again by market participants; ideally should also be the case if this data has been reported to national databases.

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?

    Yes, we agree.

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

    Yes, we agree.

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

    Generally, we believe that the proposed 3 month period is way too short. We believe that it is absolutely essential to provide sufficient time for the RRM registration process for various reasons:

    - Extensive IT implementation project

      Depending on the level of requirements to become a RRM asked for by ACER, we see the need for a respective timeframe to ensure a proper implementation. From experience of EMIR reporting we believe that ACER should consider at least 6 months for the registration process.

    - Variety of possible reporting routes is needed (competition aspect)

      We believe that there should be sufficient time to ensure that there will be a large enough number of different RRMs are registered offering market participants a real choice if they choose not to report directly to ACER themselves. Market participants should have sufficient time to compare the different offers of RRMs carefully and meet their decision. This decision is crucial as it is only possible with extreme effort to switch the RRM later on.

    Generally, we believe that the technical specifications to become a RRM need to be available as early as possible and well in advance before registration starts. This is essential in order to allow setting up all the systems according to the requirements in a limited time period. Our experience with EMIR reporting shows that the actual implementation may turn out to be more challenging than originally anticipated. Here, the final documentations were only available at a very late stage putting trade repositories under significant time pressure leading in consequence to a set-up with significant IT problems which have still not entirely been solved.

    In this context we would like to reiterate that it is appropriate to introduce different levels of RRM requirements. Especially, we see a strong need to have less demanding requirements for market participants who decide to "self-report" and/or to report on behalf of its group members.

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

Generally, we believe that the registration process should be kept as simple as possible without any overly burdensome requirements. Certainly a well-balanced approach is needed as it is at the same also essential for market participants that they can rely on the proper functioning of an official RRM they may choose.

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

We are not convinced that a full periodic registration renewal is appropriate as it would cause additional burden without any real measurable benefit. This is particularly the case if the respective RRM does already fulfil the reporting obligation without any significant incidents. The same is true for a certified annual report; this could open the door for expensive annual tests and analysis by external auditors which may at the end stating the obvious (i.e. current reporting is ok). In order to have some sort of certainty about the systems and controls in place one could think of a longer time period of e.g. having a respective test/report every three years.

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

If the Agency assesses that a specific RRM is not compliant with the requirements any more, market participants should have sufficient time to choose a new RRM and set up all the relevant IT systems. It should be noted that this process may take at least 6 months. Thus, the proposed time of 2 months is way too short.

Further comments on specific issues not explicitly covered in the consultation questions

- 2.4. responsibility of reporting data

  We would like to point out that it is important that the steps required by market participants to verify the completeness, accuracy and timeliness of data which they have submitted through a third party are well balanced and do not create any additional burden for them. It would be absolutely counterproductive if they would have to establish a "shadow monitoring system". Thus we propose that occasional checks are sufficient.

- 5.2 Requirements on the timely transmission of data

  We would like to point out that RRMs may also only report trade date (i.e. the word "and" in the first sentence should be specified to "and/or").

- 5.8 Requirements concerning the disruption of services

  We would like to point out that the degree of description needs to be specified. It would be absolutely inefficient if e.g. a disrupting of 10 minutes also would have to be reported to ACER if this does not affect the regular reporting at all (e.g. the T+1 /M+1 reporting requirement).

- 6.2.2 Technical Specifications

  We would like to point out that it is very important that these technical specifications are publishes as early as possible; only then it will be possible for a reporting system to make a sound decision whether to become a RRM or not.

- 6.2.4 Testing

  We would like to point out that ACER should take into account that the individual implementation times for RRMs may vary. Thus it should be avoided that a specific RRM that may not yet be completely ready for testing only gets an early time slot for testing which in turn may cause that the final version may not be tested. This could also create some implementation risk for market participants).

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