

Eurogas Response to ACER Consultation on the Trade Reporting User Manual (TRUM)

GENERAL REMARKS

Eurogas welcomes the second ACER's public consultation on the draft Trade Reporting User Manual (TRUM) and takes note of the evaluation of the answers to the previous consultation. Although some progress is been achieved, as regards in particular non-standard contracts and fields guidelines for standard contracts data reporting, we wish to share in our general remarks some concerns regarding reporting requirements under REMIT and the content of the TRUM. In particular:

Market participants will need adequate time prepare their IT systems and assess the relative costs. Therefore it will be crucial that the TRUM and the lists of organised market places and of standard contracts are ready and published in due time, i.e. simultaneously with publication of the REMIT Implementing Acts.

Adequacy and robustness must be ensured in the process of validation of transaction reports. Market participants should be provided with acceptance and validation receipts on a close to real time basis so that they are not put at risk of breaching their legal obligation in the event of ACER sending out notifications up to D+2. Sufficient time to rectify any issue should be provided.

Close to real time notification service must ensure market participants that ACER has received a transaction report, that the data fields are completed as expected and that it has been fully matched with the corresponding report from the respective counterparty.

As per the governance of reporting of contracts upon request, our view is that when a request is made by ACER under Article 4 of the REMIT Implementation Act (for list of contracts such as intra-group transactions or contracts for the physical delivery of very low volumes of produced gas and electricity), the nature of the request needs to be substantiated to an individual case or investigation and the market participant must be provided with sufficient time to provide such information. The mechanism and format of the data for providing such information must be defined in the TRUM. It should also clarify whether (i) this reporting will fall within the existing reporting framework for standard and non-standard contracts and (ii) persons to whom those contracts relate become subject to registration as a market participant but also as required under article 9 of the TRUM.

Furthermore better elaboration of examples, especially with regard non-standard contracts is inevitable, but we expect that the content and formats in Chapter on non-standard contracts will be further discussed/consulted with relevant stakeholders and clarified as to properly reflect outcomes of such consultations. At this stage, we would welcome further examples in conjunction with orders to trade or lifecycle information reporting.

In general, so far TRUM does not always lay down which field are mandatory/optional, we would also appreciate if TRUM lays down explicitly which data fields are (strictly) mandatory and which fields might be left blank or populated freely by market participants/reporting entity.

- 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.**

Beside our general remarks mentioned above, the TRUM should provide market participants with detailed rules regarding the setting up and updating process of the public list of standard contracts if this is not explicitly provided for by the Implementing acts. Eurogas would understand that these rules include exceptions or extraordinary procedures in order not to hinder the markets' development. A solution enabling market participants to receive notifications of new contracts and market places added to the list is in our view strongly recommended. We also wish to stress once again that a timely publication of such a list is key for market participants to assess the real impact of the implementation of REMIT.

The treatment of contracts that are to be reported on request (i.e. § 3.1.4. (p.13)) should be better clarified in our view, since we believe that the TRUM should explain how these contracts should be reported if required to do so: timeframe, format, etc. Any such request should be anyway motivated and limited to the purpose (e.g. investigation/complaint/...) and the reporting thereof should fall within the existing reporting framework for standard and non-standard contracts, as the case may be. Timing-wise, sufficient time should be granted to market participants to report these trades as manual intervention might be needed.

Also very important, we believe the TRUM should specify what the fall-back solution would be in case of failure of the ARIS system, and whether an alternative solution is provided where market participants will have to report or a "force majeure" case happened. The TRUM should also specify what the updating process would be as well as the related information to market participants.

- 2) Please provide us with your general comments on the purpose and the 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 organized places). If not, please explain which additional information should be covered?**

As already mentioned above, at the first reporting phase we would welcome further examples how relevant fields in conjunction with orders to trade should be populated or further details on lifecycle information reporting.

The TRUM document should also include a comprehensive list of the standard contracts, if not explicitly cited in the Implementing Act. Consequently, all other contracts will be regarded and treated as non-standard contracts. Furthermore, an efficient process for updating this list should be established and communicated to the market participants.

The TRUM document should reiterate the fact that Market Participants are not expected to report these standard contracts.

The TRUM document, in addition to the Implementing Act, should specify in detail the reporting timeline for all contracts categories, e.g. standard contracts, non-standard contracts:

- i. start of reporting (6 months / 12 months)
- ii. time elapsed between trade execution and reporting obligation (T+1 / T+30)

3) Please provide us with you views on the Agency's proposed approach as regards the list of standard contracts. In particular, please provide your views on whether: (i) the list of standard contract types enables reporting parties to establish whether to use Table 1 or 2 of Annex I of the draft Implementing Acts when reporting information under REMIT and (ii) the identifying reference data listed in Annex II that the Agency intends to collect are sufficient and suitable to establish the list of standard contracts.

We believe the list of standard contracts could be exhaustive if it was integrated by the following information:

- physical / financial regulation;
- maximum depth.

As mentioned above, further clarification on updating process of this list is needed as well as its timely publication or standardization of its format as not to hamper trading activities.

Do you agree that the list of standard contracts in Annex II should also be considered sufficient to list the organized market places? Please justify your views.

The reporting of standard contracts and orders to trade shall be in our view a clear responsibility of organised market places, while market participants should retain the right to report directly to ACER if they wish to do so. A firm and possibly legally enforceable commitment from organised market places on this subject would be very helpful. Organised market places shall also offer upon request of a market participant the reporting service in due time, at reasonable costs and respecting clear conditions set well in advance. If those criteria are not respected, market participants risk incompliance with REMIT. We would thus urge ACER/NRAs to help define the process of such reporting relationship to ensure a proper, clear and transparent process in due time and at reasonable costs.

Eurogas believes that both a list of standard contracts and of organised market places should be available in an easily exportable format, as to enable market participants to automate the update of these lists in their data bases. A regular and timely update would also be welcome.

We believe reporting entities should be granted enough time to adjust to this new situation and a "phase-in" period for adjustment should be considered. In terms of the go-live of reporting standard contracts, it is considered necessary for the list of standard contracts to be made available at the time of publication in the Official Journal of the implementing acts, to allow market participants sufficient time to fully configure their reporting systems.

The list of standard contracts should also be sufficiently detailed so that market participants can easily identify within their portfolio which bi-lateral trades concluded outside an organised market place should be reported T+1.

This would require the identification of each off-platform trade as equivalent or not to a standard contract on the list. Should it qualify as a standard contract, same timelines (T+1)

would apply. Otherwise, our understanding is that the non-standard timelines (M+1) contracts would apply.

This is crucial in our view, since a clear view beforehand on which bi-lateral trades concluded outside an organised market place should be reported by using respectively the reporting format of standardised contract and non-standard contracts would help market participants avoiding unnecessary and costly changes in IT system and processes.

A separate list would therefore be needed for the organized markets, at least to avoid making the search and to better delineate a borderline between standard and non-standard contracts. Based on the definition that ACER provides of organized markets, all brokers active in Europe would fall into the list, and consequently all their products, even if they are “not so standard”.

REPORTING OF STANDARD SUPPLY CONTRACTS

- 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.**

Eurogas notes with regret that the document still presents a lot of confusion between the notion of “contract” and the notion of “transaction”. Table 1 should be called "Reportable details of transactions in standard contracts" and not "Reportable details of standard contracts", understood that ACER is talking about details of the transactions and not about contracts.

The proposed definitions do not provide any legal certainty, and they rather seem drawn up by financial practice. In our view such an approach may lead to confusion. Eurogas welcomes ACER’s efforts to bring further clarification the notions of “product”, “contract” and “transaction”. However, we do notice that these explanations are provided under chapter 4 of the TRUM dealing with the “reporting of standard supply contracts”. Therefore we wonder why the same exercise has not been carried out for chapter 5 of the TRUM “reporting of non-standard supply contracts”.

We doubt at this stage that these definitions are perfectly suitable with non-standard deals, especially those related to “contract” and “transaction”. We thus believe that ACER needs to consult market participants in order to clarify these notions for non-standard deals. We think this is of paramount importance for market participants to properly identify the details they need to report to the Agency.

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

Beside general comments (e.g. mandatory vs optional fields), we have following comments on particular data fields:

4.2. Data fields related to the parties

Data Field No (8) Beneficiary Identification

We note that ACER mentioned that “*the beneficiary identification concept may be different in REMIT compared to EMIR*”. We are not sure to understand to which differences the Agency

refers to. Indeed, EMIR defines the beneficiary as *“the party subject to the rights and obligations arising from the contracts. Where the transaction is executed via a structure, such as trust or fund, representing a number of beneficiaries, the beneficiary should be identified as that structure. If the beneficiary of the contract is not a counterparty to this contract, the reporting counterparty has to identify this beneficiary by a unique code or, in case of individuals, by a client code as assigned by the legal entity used by the individual”*.

More clarification would be welcome on this point.

4.3. Data fields related to order type

Data Field No (13) Order ID

Eurogas does not clearly understand how an order ID could be unique by contract. We invite ACER to consider whether it would be more relevant to mention “by transaction” instead of “by contract”.

Data Field No (14) Order type and No (15) Order Condition

Fields 14 and 15 are for the most part in the concept of "commercial strategy" and should not be reported by market participants.

Data Field No (17) Minimum Execution Volume

We understand that it is not in ACER’s interest to know price and quantity of an order in general, but they may be interested only in certain cases.

This approach would be workable only for closed orders turned into deals (price and quantity would be known), less so for orders that for instance are cancelled.

We also note that the type of order MINIMUM EXECUTION is mentioned here for the first time here. Eurogas wonders why it is not in the lists above. More clarification on this point would be welcome.

Data Field No (19) Undisclosed Volume

Eurogas wonders what influence can have an undisclosed volume on the market and why ACER would need such information. We are not even sure such a request is within the scope of REMIT.

4.4. Data fields related to contract type

Data Field No (22) Contract type

Eurogas wonders whether intraday and spot transactions are to be considered as falling under the “Forward style of contracts” type. More clarification is welcome on this point.

4.5. Data fields related to details of the contract

We acknowledge that this chapter refers to the data fields related to details of the transactions and not the contracts.

Data Field No (24) Event timestamp

- For standard contracts: in the standard contracts the date of completion is defined when the contract is completed. If nothing happens during the life of the contract, however, we should report it at least twice, once we write the closing date of the transaction, the second time when it ends.

We note anyway that the even the start/end dates of the contract are asked. This information concerns similar elements in format but very different in what they represent.

- For most non-standard contracts, the executions will automatically be monthly physical deliveries. Therefore, this field cannot be filled as such. As it will be linked to the month of delivery, the TRUM should establish a common rule for all market participants to populate this field, for example the first day of the month of physical delivery.

Data Field No (28) Linked Transaction ID

For the execution of multi commodity non-standard contracts, where both counterparties can be buyer and seller, it should be clarified that this field always refers to the non-standard contract ID and not to the related executions. For example, for an “Asset Based Contract” where counterparty A sells electricity to counterparty B and buys gas from Counterparty B, each reportable leg of the execution (electricity leg and gas leg) must refer to the non-standard contract ID and not to the UTI of one of the other legs.

Data Field No (32) Price

We believe the TRUM should specify that the price of execution of non-standard contracts is only the variable commodity price as mentioned on the invoice, excluding all upfront or monthly payments executed in the frame of the contract.

Data Field No (34) Index Value

Eurogas wonders whether there is not confusion between (i) the index value at the closing of the contract and (ii) the value of the index against which the deal will be remunerated. For example, if a contract is closed with a TTF index for February 2015, should we report the value of the today index or mention “0” as far as the value of the index will be known later at the execution of the contract? Therefore, depending of the reporting option, we invite ACER to consider that the value of index could be systematically “0” until the execution of the contract.

Data Field No (36) Notional amount

If we refer to the comments of the Agency, the notional value (price*quantity) does not refer to the contract but to the transaction. We are also confused by the paragraph related to orders. We understand that this field refers to the transaction value and not to the order value. These two notions may be different in practice.

This field seems to ask the order value rather than the value of the transaction. Theoretically the two may be different considering the current platform OTF operated by brokers and characterized by their discretionary.

We invite ACER to clarify if a change of the deal is involved when the value is defined, and then their deferral in terms of reporting?

Data Field No (37) Notional Currency

We hardly see situations for standard contracts where the currency of the price is different from the currency of the notional value.

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

In general, Annex III is helpful, and it should be maintained and regularly updated to cover new types of transactions, etc. after the official release of the TRUM. However, we note that the examples have not been populated consistently with the field guidelines for the reporting of standard trades and should be carefully reviewed prior to releasing the final TRUM. We would also welcome more examples of transaction reporting, as mentioned above, especially further examples in conjunction with orders to trade or lifecycle information reporting. At the later stage of reporting, detailed examples for non-standard contract reporting are expected by Eurogas.

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

See our answer to question 6.

REPORTING OF NON-STANDARD SUPPLY CONTRACTS

Eurogas notes that the Implementing Acts are now clearer as per the information to be reported and the details of the non-standard contract in table 2. Nevertheless we believe that ACER oversteps its prerogatives when requiring the reporting of the “execution” of non-standard contracts, also in consideration of the fact that the notion “execution” is not yet defined, but will probably relate to the “invoicing”, i.e. invoicing of energy consumed, produced,...). In any case, the obligations defined by the TRUM should not exceed the scope and nature of obligations defined by the Implementing Acts or in REMIT. We expect further discussion on guidelines/formats as the current draft can be seen as a copy-paste version of guidelines for standard contracts which is not always suitable for the reporting of non-standard contracts.

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

Data Field No (12) Contract Type

We believe that the option “Other” should be added in the list of options as the proposed options might not always capture all types of non-standard contracts.

Data Field No (15) Estimated Notional Amount

We believe this field should be left blank for non-standard contracts for which total notional quantity is unknown at the time of the contract (see Data Field No 21). It should also be left blank when the price calculation method refers to forward indexes or prices not published or not calculated at the time of the contract. See comment on field (21) for what concerns optionality estimation.

Data Field No (19) Delivery End Date

We believe this field should be left blank for non-standard contracts which end date is unknown at the time of the contract. For example, an Asset Based Contract end date can refer to the decommissioning date of the underlying physical asset, without any precision on this date in the contract.

Data Field No (21) Total Notional Contract Quantity

We believe this field should be left blank for non-standard contracts for which the quantity is unknown at the time of the contract.

This is also the case of some Asset Based Contract for which the total contractual quantity cannot be estimated because the lifetime of the underlying physical asset is not known when signing the contract (see Data Field No 19).

For non-standard contracts with optional quantities, we would recommend that market participants specify how to calculate the Total Notional Quantity. The simplest would be to adopt a calculation based on a theoretical full exercise of the optionality.

Data Field No (22) Notional Quantity Unit

If Field (21) Total Notional Contract Quantity is blank, this field should also be left blank.

Data Field No (23) Volume Optionality Frequency

We would welcome further clarification on this data field as the TRUM is silent on this point

Data Field No (25) Volume Optionality Intervals

We do not understand this field, point 25 talks about optionality and ACER talks about the name of the contract... the field should probably be corrected.

Data Field No (26) Volume Optionality capacity

The unit of this capacity is not specified. It can be MW, MWh/d, MWh/h, Thm/d, Thm/h, etc. As there is no reference in the IAs to specify the unit of this field, it should be specified in the TRUM in which unit this capacity is expressed referring to other fields: for example the Notional Quantity Unit per hour (when this field is not blank) or the Notional Quantity Unit per Volume Optionality Frequency.

For many Long Term Contracts, this optionality capacity is defined as a complex percentage related to seasons, delivery points, monthly and annual cumulated quantities take or pay quantities etc. Therefore it cannot be expressed as a simple figure. It should be specified in the TRUM that this field should be left blank in case of complex optionality.

Data Field No (29) Fixing Index

For non-standard contracts, it should be clearly specified in the TRUM that only published indexes related to electricity or gas have to be reported, as it is already specified in the Data Field No (13) Energy Commodity definition.

Eurogas believes that including non-published indexes or published indexes related to commodities out of the scope of REMIT would significantly increase the complexity of REMIT reporting. For example, an Asset Based contract price calculation can refer to internal costs (operational variable costs, nuclear fuel management costs, etc.) or technical indexes related to the underlying asset. Another example is a supply contract to final customer which price calculation refers to indexes linked to the industrial process of the customer. For an Asset Based contract linked to a coal fuelled power plant, which is very similar to a clean dark spread contract, coal and emission indexes should be explicitly excluded from REMIT reporting as it is specified in Data Field No (13) Energy Commodity definition. It should be the same for oil indexes (fuel oil, gas oil, Brent ...) used in Gas Long Term Contracts price calculation methods.

Data Field No (30) Fixing Index Types

It seems that here more than the type of index they indicate the type of contract/product. Neither before nor after there is a field where to indicate the type of index (TTF, Brent, ...), then we are prompted for the source without specifying what kind of index.

We understand that ACER asks here the same values as in field 12. We would like to know if this was ACER's intention.

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.

Yes, it is highly recommended by Eurogas, incl. further clarifications/details on orders to trade reporting for non-standard contracts or lifecycle information.

REPORTING OF GAS TRANSPORTATION CONTRACTS

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

We would welcome further clarification on a borderline between standard and non-standard transportation contracts in conjunction with the definition of "organized market place" laid down in IAs.

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.

Yes, it will be useful, see also our previous response (question 12).