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ACER Public Consultation on the provisional REMIT list of organised market places

(Pursuant to Article 3(2) of the REMIT Implementing Acts.)

Evaluation of Responses

PC_2014_R_07

20 March 2015

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1 Introduction

The list of organised market places is published on the Agency's REMIT Portal website¹. The purpose of the list is twofold:

1. It enables market participants to identify the organised market place as reporting channel for transaction reporting according to Article 6(1) of the REMIT Implementing Acts.
2. Furthermore, it assists the Agency to comply with its obligation - according to Article 3(2) of the REMIT Implementing Acts - to draw up and maintain a public list of standard contracts in order to facilitate reporting and help organised market places' submission of identifying reference data to the Agency for each wholesale energy product the organised market places admit to trading.

In order to publish the list while ensuring transparency and full involvement of stakeholders, the Agency was engaged in a two-step process:

1. The Agency launched an open call for organised market places to register with the Agency during October 2014. The registrations received through this open call formed the basis of the provisional list of organised market places consulted upon.
2. Between 14 November and 11 December 2014 the Agency conducted a public consultation on the provisional list of organised market places.²

This document provides a summary of the comments received from respondents of the public consultation that are relevant for the Agency's decision on the publication of the list of organised market places. The document also provides indication how the Agency takes into consideration these responses.

¹ <https://www.acer-remit.eu/portal/organised-marketplaces>

² http://www.acer.europa.eu/Official_documents/Public_consultations/Pages/PC_2014_R_07.aspx

2 Respondents

Twenty nine organisations responded to this public consultation representing the interests of individual market participants, energy exchanges, national regulatory authorities, and capacity allocation platforms as well as of European and worldwide associations. Respondents belong to different EU Member States and to Europe and worldwide organisations or institutions. The following table shows the country/region of respondents participating in the public consultation. Annex II lists all respondents by their activity.

Country/Region	Number of responses
Austria (AT)	1
Switzerland (CH)	2
Czech Republic (CZ)	2
Germany (DE)	2
Spain (ES)	2
EU-wide (EU)	3
France (FR)	2
Greece (GR)	1
Croatia (HR)	1
Hungary (HU)	2
Italy (IT)	3
Lithuania (LT)	1
Luxembourg (LU)	1
Norway (NO)	2
Romania (RO)	1
Slovenia (SI)	1
United Kingdom (UK)	1
World-wide	1
Sum	29

No respondent requested to keep his or her response confidential.

3 Responses received and ACER's view

On the basis of the open call to register, the Agency assembled a provisional draft list of organized market places.³ In addition, the Agency conducted its own research and added to the draft list: members of European associations of organized market places and entities otherwise recognized as potential organized market places.

The Agency consulted stakeholders primarily on the draft list of organized market places. Comments were welcome on all aspects of the list. Moreover, the Agency identified five additional questions for which it sought feedback from the respondents of this public consultation.

The following section provides an overview and an analysis of the responses received in the public consultation on the publication of list of organized market places, focusing on key issues raised by the respondents.

3.1 Draft list of organised market places

Please provide us with your comments on the draft list of organised market places. Do you see any omissions or errors in the list? Do you think that any organised market place or any information on organised market places is missing, that should be published in order to facilitate transaction reporting under REMIT? Please comment especially the potential organised market place status of those entities marked with an asterisk that had not registered themselves as organised market places at the time when this public consultation was launched. Please justify your reply.

Respondents' feedback

Several respondents indicated entities that they recognized as organized market places but were omitted from the provisional list of organized market places. Other respondents argued that they should not be considered organized market places and as a consequence be deleted from the list prior to publishing of the list.

Some respondents were of the opinion that the list should include all the mother companies, sister companies, subsidiaries and branches of organized market places.

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http://www.acer.europa.eu/Official_documents/Public_consultations/PC_2014_R_07/ANNEX_TO_PC_2014_R_07.pdf

One respondent emphasized that the list of organized market places (OMP) should give market participants a binding, prescriptive and exhaustive list of who is considered as OMP according to REMIT. Only this approach will safeguard market participants during their process of proper REMIT reporting implementation. Thus the Agency needs to ensure a fully complete list which needs to be kept up-to-date, as otherwise the list would lose its added value for market participants. OMPs should be fully aware of their responsibility within the REMIT reporting implementation process and follow their obligations coming from the REMIT Implementing Acts.

A couple of respondents are of the opinion that the TSOs organizing the balancing market may in many cases be organized market places. When TSOs actively buy or sell volumes in the balancing market, they are not doing this to cover their own production or consumption. They ensure supply/demand balance of the power system on an instant basis and as such act as counterparty to all imbalances. In this respect they act as a single buyer/seller towards third parties offering to buy or sell volumes to offset overall imbalances in the power system. They meet the definition of Organized Market Place provided under Article 2(4) of the REMIT IA, and should therefore be listed as such.

The Agency's view

Taking into account the responses received by public consultation participants the Agency amended the provisional list of organised market places.

Primary and secondary cross border capacity allocation platforms are currently not included in the list. Reporting of gas and electricity transportation contracts will start fifteen (15) months after the entry into force of Commission Implementing Regulation (EU) No 1348/2014 (Implementing Acts). ACER will update the list of Organised Market Places for transportation contracts no later than 9 months prior to start of reporting of transportation contracts for gas and electricity.

Where, in the list of Organised Market Places, a reference is made to a group of companies, any company belonging to the group and performing the activities of an Organised Market Place in the wholesale energy market, which is not explicitly mentioned in the list, is deemed to be also included in the list. For transparency purposes, those companies are invited to liaise with the Agency as soon as possible.

According the REMIT Implementing Act 2(4) an organised market place means a multilateral system, which brings together or facilitates the bringing together of multiple third party buying and selling interests in wholesale energy products in a way that results in a contract. In its common form a balancing market brings together multiple parties selling balancing services and a single buyer represented by the TSO. Thus in its common form the balancing market does not fulfill the conditions set out for OMPs. On the other hand it is to be noted that it does not mean that entities organising balancing markets cannot be considered persons professionally arranging transactions.

The Agency will update the list of Organised Market Places on an ongoing basis.

3.2 Status of virtual trading points

Virtual trading points (VTPs) are currently not included in the draft list of organised market places, unless they provide brokering services or are considered as an energy exchange. Do you agree with this approach? If not, please justify your reply.

Respondents' feedback

The majority of respondents agree that VTPs are not organised market places.

A couple of respondents are of the opinion that to the extent that they fall under the definitions of REMIT, trade and order reporting should be mandatory for all market places and not include exceptions for any market places or virtual trading points.

One respondent believes that VTPs should be included in the list of organized market places whenever they offer matching services for buying and 1+ interests that “result in contracts”. Furthermore, hub operators as service providers should be allowed to report trades on behalf of market participants via the use of appropriate trade reporting systems.

The Agency's view

As long as the VTP serves merely as a virtual entry/exit point that enables grid users to transfer energy from one balancing group to another within the market area without the need to book capacity and does not offer services that are characteristic to organised market places it is not to be considered OMP. Hence the Agency is of the view that VTPs are not to be considered organised market places unless they fall under the definition of organised market place as defined by REMIT Implementing Act in which case they should be included in the list of organised market places.

3.3 Status of primary auction platforms for transportation contracts

For the reasons stated in point 1 in paragraph 4 of the consultation paper, the Agency currently believes that primary auction platforms for transportation contracts do not have to be listed as organised market places. Do you agree with this approach? Please justify your reply.

Respondents' feedback

Many of the respondents were in favour of not categorising primary auction platforms for transportation contracts as organised market places. On the other hand several respondents raised concerns and pointed out possible issues that could stem from not including these platforms from the list of OMPs.

Some respondents think that whether or not the TSOs are anyway obliged to report the contracts relating to the transportation of electricity or natural gas is not relevant and so this criterion should not be used to assess whether an entity is considered OMP. On the other hand other respondents were of the opinion that in case a platform simply acts within the framework of the allocation rules established by the TSOs and approved by the NRAs it should not own bear the obligations already borne by the TSOs.

According to some respondent the legislation is unclear regarding the classification of capacity contracts as either standard or non-standard. Hence the non-classification of primary auction platforms as OMPs would infer that the capacity contracts are non-standard. At the same time other respondents consider that the distinction between standard and non-standard contracts does not apply to transportation contracts. Some respondents fear that if primary auction platforms are not listed it will imply that secondary trading in the same products OTC may be classified as non-standard products, and thus reported 30 days after the conclusion of the contract instead of one.

According to a respondent the OMP status is less relevant for primary market however it becomes relevant with regards to secondary market. Some respondents call for a separate list of secondary auction platforms for transportation contracts.

Some respondents would like to avoid double standards noting that if these platforms offer other kinds of wholesale energy products (e.g., capacity contracts in the secondary market or energy products), in addition to primary capacity contracts, they should be subject to the same regulatory obligations as other OMPs, including the obligation to offer a data reporting agreement to market participants under REMIT. In a similar spirit other respondents noted that products auctioned on the primary allocation platform like physical and financial transmission (PTR, FTR) rights must come under the same reporting obligation as similar products traded on other exchanges like EPADs on Nasdaq and FTRs in OMIP.

One respondent draw the attention to the similarities between energy spot markets and auction platforms for transportation contracts as both are pursuing the same type of allocation of resources based on system marginal price. Yet spot markets are already on the list of OMPs while auction platforms for transportation contracts are not. Another participant expressed its opinion that for an exhaustive view the primary auction platforms for transportation contracts should be also present on the list. On the other hand some respondents emphasised the need for a consistent approach and suggested rather to delist auction platforms for transportation contracts that were already on the draft list.

The Agency's view

The respondents were split with regard to whether primary auction platforms for transportation should appear on the list of organised market places. For the sake of consistency the Agency removed auction platforms for transportation contracts that originally appeared on the draft list of OMPs. Thus primary and secondary cross border capacity allocation platforms are currently not included in the list. However since the opinion of stakeholders diverged the Agency decided to review and if necessary update the list in due course. Reporting of gas and electricity transportation contracts will start 7 April 2016; the Agency will update the list of Organised Market Places for transportation contracts no later than 9 months prior to that date.

3.4 Usage of market place IDs

The final list of organised market places is supposed to include organised market place IDs for the purpose of facilitating transaction reporting under REMIT. Do you agree that the list of organised market places should make this information publicly available? If not, please justify your reply.

Respondents' feedback

All respondents agree that market place IDs should be made public.

One respondent stressed the importance of including the exact contact details of an organised market place in order to share and discuss any REMIT related issues in an efficient way.

One respondent also welcomes the addition of EIC as a market place identifier as EIC has been in use to identify markets for a long time.

One respondent suggests having an ACER code for organised market places.

One respondent contests the use of LEI as an identifying code as it is not a unique identifier for an organised market place. One legal entity can operate with one LEI only but can run several market places, therefore LEI cannot be a unique identifier for an organised market place.

Several respondents suggest only one code should be used to identify OMPs and that ACER should decide on which code to use.

Several respondents note that multiple identifiers will complicate the process of matching and additional information will have to be included in the deal capture system.

The Agency's view

The Agency supports the view that the organised market place IDs should be made public. The fact that the use of MIC code to identify organised market places is not universal the Agency has decided to allow the use of LEI codes for identification of organised market places despite the fact that the use of LEI is not a unique organised market place identifier in some instances. In addition to MIC and LEI the Agency has decided to allow the use of ACER code for the purpose of organised market place identification. Each organised market place will be assigned an ACER code through the registration process either as market participants or as registered reporting mechanisms. The Agency abandoned the proposal to use EIC as identifier for organised market places due to the fact that EIC codes are not unique in some instances and are only assigned to organised market places involved in physical delivery of wholesale energy products and as such are not comprehensive.

3.5 Updating the list of organised market places

The list of organised market places is supposed to be updated in a timely manner. The Agency is currently intending to update the list on a regular basis as and when required, in particular as and when the Agency is given further information on gaps. Do you agree with this approach? If not, please justify your reply.

Respondents' feedback

The respondents underlined the implications of being on the list of OMPs. They pointed out that each update of the list has the potential to reclassify a contract between standard and non-standard and therefore such changes may imply potentially costly system development work. ACER should grant market participants and the new OMP a reasonable phase-in time period for implementing REMIT reporting processes. As a consequence the main message from the respondents is to develop, maintain and communicate clear processes for updating the list of OMPs.

The respondents emphasised that there is a need for a transparent change control process: an agreed procedure and timescale for the addition and removal of an OMP from the list should be in place.

The review period could be also fixed e.g. every 6 months. The timing of the updates should be frequent and predictable. There could be a fixed period for updates e.g. only the first of the month in order to avoid missing any modification.

The good level of communication should be maintained. It involves an active communication by ACER. A robust mechanism is needed to notify market participants when changes have been

made to the list. One of the respondents put forward the idea that the relevant stakeholders could be notified by mail if there is an updated list. Another respondent suggested that the list could also be available in XML format and via RSS.

The Agency's view

Categorised as organised market place puts certain reporting obligation on these entities without having a window of transitional period, thus organised market places are welcome to inform the Agency as early as possible in order to give the stakeholders enough time to accommodate the possible consequences of the change in their status.

The Agency acknowledges the need for a transparent process for updating the list of organised market places. The update of the list is on an ongoing basis so it always reflects the Agency's current knowledge. The update of the list is indicated in the naming convention as the version number of the list grows (1.1, 1.2 etc.). Any update is announced on the tab of List of organised market places on the REMIT portal. It is important to mention that a revision of the list as regards to the platforms for transportation contracts is already planned no later than July 2015 (9 months prior to start of reporting of transportation contracts for gas and electricity).

After a period of initial consolidation to further improve transparency the Agency intends to publish a document to cover the process of registration of new entities, the timing of updates and the communication channels used to inform stakeholders about the changes.

3.6 Other issues raised by the respondents

One respondent shared its concern on the readiness of OMPs to offer a robust reporting service ahead of the commencement of the reporting obligation for market participants. ACER has a key role in working with OMPs and market participants to ensure that all listed OMPs will be ready to offer reporting services for orders and/or transactions. A first step in this process is establishing a definitive list of the initial in scope OMPs. It is expected that upon registration and listing by ACER, OMPs are assuming the responsibility and commitment to be ready for providing reporting services on behalf of market participants.

The Agency's view

The Agency shares the view that all entities upon registered on the list of organised market places published by the Agency shall at the request of the market participant offer a data reporting agreement according to the REMIT Implementing Acts 6(1).

Annex I

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

The work of ACER is structured according to a number of working groups, composed of ACER staff members and staff members of the National Regulatory Authorities. These working groups deal with different topics, according to their member's fields of expertise.

Annex II

No.	Respondent	Type	Country
1	42 Financial Services	Broker	CZ
2	A2A Trading	Market Participant	IT
3	Borzen	Market operator	SI
4	CASC.EU	Capacity Allocation platform	LU
5	Central Allocation Office	Capacity Allocation platform	DE
6	CRE	National Regulatory Authority	FR
7	EDF Trading	Market Participant	FR
8	EDISON	Market Participant	IT
9	EFET	Industry association	EU
10	ERU	National Regulatory Authority	CZ
11	EURELECTRIC	Industry association	EU
12	EUROPEX	Industry association	EU
13	Gas Natural Fenosa	Market Participant	ES
14	HROTE	Market operator	HR
15	HUPX	Energy Exchange	HU
16	CEEGEX	Energy Exchange	HU
17	Iberian Gas Hub	Energy Exchange	ES
18	International Association of Oil and Gas Producers	Industry association	WORLD
19	LAGIE	Energy Exchange	GR
20	MERCURIA	Market Participant	CH
21	NASDAQ	Energy Exchange	NO
22	National Grid	Transmission System Operator	UK
23	Oesterreichs Energie	Industry association	AT
24	OPCOM	Energy Exchange	RO
25	REGULA	National Regulatory Authority	LT
26	Repower Group	Market Participant	CH
27	SORGENIA	Market Participant	IT
28	STATOIL	Market Participant	NO
29	STEAG GmbH	Market Participant	DE



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