

ACER Public Consultation on the European Register of Market Participants

A EURELECTRIC response paper

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EURELECTRIC is the voice of the electricity industry in Europe.

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

We Stand For:

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.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets** as the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

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.

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Consultation questions

Questions on improvements of the Registration Format of the European Register

1. Regarding fields 112 and 316 ('VAT number' of the market participant and ultimate controller), taking into consideration that some market participants and ultimate controllers do not have a VAT number, ACER proposes to add an additional checkbox labelled: 'I do not have a VAT number.' Moreover, taking into account that different formats for VAT identification apply outside the European Union, ACER proposes to adopt a more flexible format for fields 112 and 316 for non-EU market participants.

Do you agree with this change? If not, please justify your reply.

Generally, we do not oppose this proposal, but we also question what is the benefit of requiring VAT numbers for the purpose of REMIT? Based on this assumption we would prefer to delete this field, if not otherwise necessary.

2. Regarding the reformulation of field 113 (Energy Identification Code ('EIC') of the market participant):

a. EIC codes are widely used for reporting transaction and fundamental data. The current registration format allows only one EIC code to be provided by a market participant, although there may be several different types of EIC codes related to the same market participant and used for reporting. Moreover, although the EIC codes are publicly available, other pieces of information, such as the location of the facility identified by the EIC code, are not public. Taking into consideration the need to identify for monitoring purposes to which market participants different EIC codes belong to, the current registration format can be developed to allow the introduction as mandatory fields of all EIC codes (i.e.: EIC X, EIC Y, EIC Z, EIC T, EIC W and EIC A) related to the same market participant. What are the pros and cons of such an approach? Please explain.

b. In case the introduction of all EIC codes used for reporting by a market participants (see previous question) is allowed by the European register, the Registration Format could be expanded to:

☐☐ identify the name of the object to which the EIC code relates (e.g.: name of the power plant),

☐☐ identify the address of the object to which the EIC code relates (e.g. location of a power plant identified by X EIC code),

☐☐ identify the country where the market participant or the object is physically registered (e.g. in case of Y, T EIC codes, all countries which lie in the area of the Y, T EIC code,

☐☐ identify the market participant's role/relationship with the submitted EIC codes in order to differentiate situations where one code is used by more than one market participant. The Agency has identified the following relevant roles:

o Proprietor/owner of the object to which the entered EIC code relates

o Operator of the object to which the EIC code relates

o Other role which has information about the object to which EIC code relates

- i. Do you agree with the possibility to add these mandatory fields in order to identify each EIC code? If not, please justify your reply.
- ii. Would you like to add/reformulate any other potential role/relationship of a market participant with the submitted EIC codes to the ones mentioned in the list above?

a) In our view, there is no benefit as regards REMIT in collecting the various EIC codes. Overall, the registration process should be very straightforward, with only essential information. It's about identifying the market participant, not about all its activities represented through various certain codes. Such additional information is easily available in other data banks. We recall that the register is supposed to provide a unique identifier through the ACER code (field 121-Annex 1 to ACER Decision 01/2012) enabling a proper identification of each market participant for market monitoring purposes.

b) We see no added value in listing all power plants, locations of these power plants, role of the market participant, etc... in the market participant registration format and especially for identification purposes. This huge set of data is absolutely not required in order to fulfil the provisions stemming from REMIT. NRAs do have all these information available, it makes the registration overly process burdensome and increases the possibility of errors during updates. Therefore, we strongly ask not to add other EIC codes as mandatory fields.

EIC codes are administrated and supplied by the Central Issuing Office of ENTSO-E or Local Issuing Offices, which generally are the transmission system operators. One would expect that the issuing offices have a substantial part of the requested information available, e.g. the name of the object to which the EIC code relates (e.g.: name of the power plant). Existing data should be utilized whenever possible in order to minimize unnecessary burden.

3. Field 116 (Global Location Number of the market participant - 'GS1' in the coding scheme) is rarely used by market participants. Do you agree that this field is removed from the European Register? Please explain your reply.

Yes, we agree to remove. This Code is indeed rarely used.

4. Field 118 ('Trade Register') was requested by some NRAs. Would it be adequate to allow for special characters in this field? If not, please justify your reply.

We do not oppose to allow special characters to be included in this field (if the data field is not made mandatory) but the same question as above applies to this field, that what is the benefit of having this field in the CEREMP, once this field is irrelevant for fulfilling REMIT obligations. One should appreciate the difference between registration in the trade register and the registration as market participant. For REMIT purposes, knowing the trade register of the market participant is not needed and this information is publicly available through official, governmental websites.

5. The Implementing Regulation lays down the provision to include Trader IDs in transaction reports (field 3 of Table 1 in the Annex to the Implementing Regulation). The Trader ID is the login username or trading account of the trader and/or the market participant or counterparty as specified by the technical system of the organised market place. The field 'Trader IDs' may be added to the European Register as part of the market participant's registration information to make it easier to link different trader IDs to one specific market participant for market monitoring purposes.

Do you agree with this proposal and what are the pros and cons of this? Please explain your reply.

No. We are strongly opposed to including information in the market participant registration form that is not to be considered as "static" data and that may be subject to frequent changes. For energy trading companies, this information is too dynamic and would require frequent updates to the registration form. From an operation perspective, there is a risk that information will not be sufficiently kept up to date if too many changes occur. Additionally, the current system is not very user-friendly, nor flexible for introducing changes as only one change might be made at the same occasion, requiring regulators' approval before a next change can be introduced in the system. Bulk loading from a template should be enabled in order to avoid mistakes.

Trader ID is a reportable data field for standard contracts, this should be sufficient as it will link a trader ID to a specific market participant and a specific trade.

6. Field 120 ('Publication Inside Information') is currently filled by many market participants with a general link (for example, a link to the company's main webpage) and not with the exact location where the inside information publications are published. Do you agree to refine its definition so that it is clearly stated that the URL(s) should indicate the exact address where the inside information is disclosed publicly and, to create a new field indicating the location of the web-feed used for reporting the publications of inside information to ACER?

Information could be published by a market participant in different files (e.g. one for power plants, one for gas-related information, one for generic information, etc...) depending on the kind of inside information, thus making the one "exact address" proposal irrelevant.

However, in order to improve transparency, we suggest (i) to leave the generic definition of the website as it is today and (ii) to consider the possibility for EREMP to list more than one URL location (in this case providing the exact URL makes sense)

7. Regarding field 121 ('ACER code'), taking into consideration the need to ensure the traceability of relevant changes in the registration records² two new fields could be added to the Registration Format: one indicating previously used ACER codes; another identifying the relationship with the previous codes. The identification of the relationship between ACER codes could be provided by selecting the following types:

- same person previously registered in another Member State;
- incorporation of a registered market participant;
- spin-off from a registered market participant;
- other.

- i. Do you agree with the above proposal? Please give reasons for your answer.
- ii. Do you see a more efficient way to ensure traceability of relevant changes in the registration records?

We agree with the creation of a new data field to indicate previous ACER codes, but do not see value in a data field for identifying the relationship between ACER codes. We don't recommend to apply this for the "spin-off from a registered market participant", because this change is similar to establishment of a new market participant with the obligation to register. This could be somehow misleading for other market participants and could lead to some drawbacks.

As a general remark, both in notification emails and in the system, Market Participants are only defined by their ACER codes. It would be a great help, if the market participants would also be mentioned by name.

8. Section 4 ('Corporate Structure' of the market participant) does not currently provide full transparency on the corporate structure of the market participant. It has been proposed that every market participant registered indicates the VAT number, name, and percentage of ownership of all companies belonging to the same group³ of the market participant (including company(ies) that are not market participants) as this would increase transparency from a market surveillance perspective.

- i. What are the pros and cons of such an approach? Please explain your reply.
- ii. Are there any improvements more generally to the corporate relationship section you would suggest?

Generally, we have to say that for this section we have experienced most issues. We believe that requiring full transparency on the corporate structure of a group (including information on group entities that are not market participants) goes beyond the intention of REMIT, does not contribute to more integrity and/or transparency on wholesale energy markets and goes beyond what is currently required for other registrations (such as with the trade register, LEI application, ...). We strongly oppose against such a requirement and do not believe it's in line with REMIT level 1 requirements.

We have to stress that there are no clear rules to identify "Mother Company" as well as "controlled" and "other related companies" within the same group (in fact it is not clear what is meant with "same group"). The proposal of including names, VAT numbers and percentages of all group companies is very complex, burdensome and operationally not manageable. The corporate structure of a group is dynamic (change of ownership percentages/...) and might be very complex. We have experienced quite different legal interpretations from different companies once fulfilling this section of the CEREMP. In this regard we propose to apply competition rules and law in relation to mergers and acquisitions or other clear rules relevant for identification of Mother Company (controlling) and controlled company.

There should be also clear rules, which apply to "other related companies" otherwise in extensive legal interpretation you could really end-up with dozens or hundreds of companies to be included in this section. If this extensive legal interpretation is applied it is very difficult to handle the registration and keep the register up to date.

The registration of market participants should be a straightforward process, requiring only essential data which enables regulators to properly identify the market participant without including dynamic data that requires frequent updates and leads to an operational burdensome and costly process to keep the registration forms updated.

The proposal mentioned in this question should be very carefully considered, because it could end-up again in a situation where you have to register dozens or hundreds of companies due to the complexity of the Group shareholding. This would be neither welcomed by ACER nor by the market participants creating time-consuming huge administrative and bureaucratic system and burden. The suggested increase of registration in respect of corporate structures will add substantially to the administrative burden, but from our view it will not add much to the transparency of the REMIT trades. Especially if all companies within a Market Participant's group – even non-market participants – are to be included since the latter companies most likely will not have much, if anything, to do with wholesales energy products trading. Our proposal is that only the ultimate controller should be registered and not all relationships between all the societies.

Finally, as regards the corporate structure, it is not possible to reject a registration from another Market Participant (e.g. an external investor) if the linkage is indicated as an ORU (Other Related Undertaking). This is not very reassuring and means that you cannot reject the relationship even though the registered information may be wrong.

9. In Section 3 to 5, we understand that some fields may not be self-explanatory. In order to avoid the misinterpretation of the information inserted by a market participant, do you think that some additional free text fields should be included to allow a better description of the particular situation of the market participant? Namely regarding:

- the main activity of the market participant;
- how the ultimate controller performs such control;
- information about the existing/envisaged data reporting agreements.

Generally, it is positive if further explanations are provided, However if ACER would like to introduce additional information to be provided by market participants, firstly it should assess what is the benefit of it and if it is strictly necessary for REMIT obligations fulfilment.

In relation to the question we would not recommend ACER to introduce such additional information, because it would not bring the desired benefit and could be again interpreted in various ways by different market participants. In fact they are rather additional information requirements and NOT of explanatory nature.

10. Do you have any other comment on the current fields provided in Annex 1 to ACER Decision 01/2012 on the Registration Format that can further improve the functioning and usefulness of the European register of market participants?

Generally, rather than creation of other identification fields for market participants we would opt for deleting the redundant or proposed ones (e.g. GS1, additional EIC cods, Trader ID). At the same time we call ACER to carefully consider introduction of any additional registration obligations. We generally consider the required information and data as sufficient.

We consider redundant to fill in persons responsible for trading and operational decisions (fields 202.-211.). We would recommend to limit the information requested related to the natural persons linked to the market participant. We believe it is sufficient to only request for a contact for any communications regarding REMIT registration, inquiries or other and see little value in requiring data re the responsible for trading and operational decisions. It should also be noted that within market participants, there is often not one ultimate person responsible for trading or operational decisions but it's a co-decision and the composition of these teams may change. Based on above mentioned we call for deleting such fields or persons from CEREMP

Even though ACER has provided initial guidance in respect of what constitutes an 'ultimate controller' there seem to be difficulties in determining exactly who these include. It would be helpful to get more guidance on when the ultimate controller is reached within a group. We recommend simplifying the information requested under corporate structure and clearly mention that the ultimate controller should be the mother company of the group of companies, or shareholders in case of a joint venture. Again we recommend using competition law in this regard.

Questions on the functioning and usefulness of the European Register

11. In 2011, the Council of European Energy Regulators (CEER) issued a report⁴ recommending factors that are important in meeting the above aims. The current Registration regime was introduced, as it was considered that it provides the right regulatory balance to identify who is in the market and to enable monitoring markets to detect abuse. The Agency is keen to understand stakeholders' views on this balance, in particular in relation to the previously-raised concerns that different national administrative requirements, which trading companies need to meet in order to operate in the national wholesale energy markets, could represent potential barriers to the creation of a Union-wide level playing field for market participants.

i. Do you consider these national administrative requirements a relevant barrier to entry and an obstacle towards a true pan-European energy market? Please provide examples of administrative requirements that you believe constitute an unjustified barrier to entry that could distort the level playing field at European level.

ii. If you do believe there are barriers to entry, how could these be mitigated?

iii. Do you consider other possible regimes, compared to the existing registration regime, more useful to enhance the overall transparency and integrity of the wholesale energy markets and ensure a Union-wide level playing field for market participants? (e.g. EU trading license regime)

We fully agree and support that harmonized and identical registration process and requirements should be applied across EU, otherwise we risk that some market participants would not have level playing field as others registering in different member states. In an extreme situation it could lead to the situation where market participants will try to find country with less stringent requirements.

Additionally, we would not opt currently for any different kind of registering mechanism just from practical reasons, but rather to focus on fine-tuning the existing one.

12. Some counterparties and organised market places (OMPs) voluntarily require market participants to be registered in the European register of market participants before they can trade with them/in their platforms. Do you consider that the introduction of this as a legal requirement would benefit the integrity and transparency of the wholesale energy markets? What would be the pros and cons of introducing this legal obligation?

Firstly, we have to emphasize that any kind of additional requirements could be burdensome and bureaucratic in this instance and again it could discourage market participants from being active on EU market or on various organized market places (OMPs). If a formal obligation would be imposed, NRAs should be subject to a strict deadline of [5] days to validate and issue an ACER code for new market participants in order not to hinder the efficient working of the market; this must not be an barrier of market entry.

13. Do you find the publicly available extracts of the European register of market participants useful for your business and/or for the transparency of the wholesale energy market? If not, which additional information should be published?

The public extract of EREMP is useful. We would welcome to publish REMIT related contact person and its contact details or specific REMIT related contact details of the market participant, where specific REMIT related issues can be easily communicated to by other market participants.

14. Do you have any other comments on the functioning and usefulness of the European Register?

When a new Market Participant is registered, the information submitted in the draft under Section 4: Corporate structure information is to a large extent lost (sometimes parent/controlled undertaking relationships are accepted but it does not seem to be consistent). In business groups the corporate relationship allocation process is very tough. The relationships are discharged one by one, that means the business group should wait for the NRA's verification of each discharged relationship before proceeding with the following relationship. This means that the information must be submitted again for every single corporate structure relationship, when the registration has been approved. As a result of this, Market Participants are from time to time locked as "Read only" for longer periods of time after updates (i.e. no updates or registration of corporate structures can be made in respect of such market participant). We have experienced periods from a couple of months and up to about 9-10 months of a Market Participant being locked. This makes it very difficult for us to live up to the requirement that the registered data should updated when changed. Our proposal is that only the ultimate controller should be registered and not all relationships between all the societies

Other comment relate to the limited user-friendliness to make changes to the existing registrations. As mentioned under Q.5, one is only allowed to make only one change per log in, requiring regulator validation prior to being able to execute a second change. This is very time-consuming and not flexible in case multiple changes should be made. The more "non-static" data ACER wants to add to the registration format (which we clearly discourage), the more this will render the process burdensome from an operational perspective. In relation to the updates of registrations of Market Participants registered with the Danish NRA, the Danish NRA must approve every single submission for an update or a corporate structure relationship registration, which makes the registration process very time consuming (this is e.g. not the case in Germany, Sweden or the UK).

Question on the implementation timeline of changes in the European Register

15. Following consideration of responses to the public consultation, the Agency aims for any resulting modification to the European register of market participants and to the Registration Format to be adopted by 30 June 2016 and to apply as of 1 January 2017. Do you agree with this proposed timeline? If not, please justify your reply and propose an alternative timeline.

We believe that the proposed timeline is too short and that all relevant documentation and guidance must be published and available well in advance to grant market participants enough time to implement required changes. Depending on the changes proposed to the registration format, an implementation period of 6-9 months should be foreseen.

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



Union of the Electricity Industry - EURELECTRIC aisbl
Boulevard de l'Impératrice, 66 - bte 2
B - 1000 Brussels • Belgium
Tel: + 32 2 515 10 00 • Fax: + 32 2 515 10 10
VAT: BE 0462 679 112 • www.eurelectric.org
EU Transparency Register number: [4271427696-87](https://ec.europa.eu/transparency/regexp1/?id=4271427696-87)