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Datum

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Public Consultation: REMIT Functioning and Usefulness of the European Register of Market Participants, 18 March 2016
Comments by Oesterreichs Energie (Register ID number: 80966174852-38)

Dear Madam,
Dear Sir,

Oesterreichs Energie, the Association of Austrian Electricity Companies, welcomes the opportunity to comment on the public consultation: REMIT Functioning and Usefulness of European Register of Market Participants, 18 March 2016 (PC_2016_R_01). Oesterreichs Energie represents more than 140 energy companies active in generation, trading, transmission, distribution and sales which in total cover more than 90 per cent of the Austrian electricity generation and the entire distribution.

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 question the benefit of requiring VAT numbers for the purpose of REMIT. We would prefer to delete this field at all.

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?

Answer to a) CEREMP is designed as a register for legal entities and should not be a register for all the facilities of a market participant. The registration process has to be as simple as possible. All additional information is available and easily accessible in other databases (entso-e, entso-g etc.).

Answer to b) We strongly disagree in listing all power plants, locations of these power plants, role of the market participant, etc. in the registration process as a market participant. This kind of information is available to all NRAs anyway and is not needed for registration purposes at all and it would make the registration process by far too burdensome. We strongly request not to add other EIC codes as mandatory fields.

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.

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, but is the information really relevant or needed?

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 strongly disagree. First of all CEREMP is a register for market participants, not for employees of them. Secondly, trader IDs are reported with each trade. If there is a suspicious behaviour, NRAs will get the information needed on request. Thirdly, the information about traders is very dynamic, so the indication would require frequent and updates, burdensome especially for smaller companies. All of our members are energy producers and/or suppliers. We would prefer to keep all the burdens imposed to our industry as small as possible given the excessive regulation and multiple reporting obligations in existence.

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?*

We do not see the necessity to indicate specific URLs as all relevant websites have a link to "REMIT" information on the front page. We do not support creating a new field indicating the location of the web-feed used for reporting the publications of inside information to ACER as the web feeds are mostly clearly indicated on inside information platforms.

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?

For reasons of transparency we agree with the creation of a new data field to indicate previous ACER codes. However, it is not necessary to provide reasons for a change.

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?

We don't see any necessity to indicate all companies, especially those that are not market participants, because:

- A company, that is not a market participant does not give any reason to potential market manipulation
- Being part of a big holding with many companies, it is almost impossible for the energy compliance team to have all the information of changes in the whole holding structure and therefore keeping the registry at all times updated

We are concerned that this proposal would create massive additional administrative burden for market participants. We believe that the currently implemented approach is sufficient and in line with REMIT level 1 requirement.

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.

We believe that the vast majority of registered market participants are producers and/or suppliers, either publicly owned or even listed. We believe it will be much more efficient if ACER asks questionable market participants for more information than to add additional burden to the whole market.

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?

The registration process should be as simple as possible. It should enable regulators to identify market participants without operationally burdensome and costly processes for each and every market participant to keep the registration forms updated.

Therefore we would like ACER to carefully consider the potential introduction of any additional obligation as the actually required information and data should be absolutely sufficient. Indeed, we would opt for deleting the redundant fields and those not necessarily needed (e.g. GS1, additional EIC cods, Trader ID). In our view it would be much more efficient to have one contact person indicated which can be asked by ACER in case there are any questions rather than to oblige the whole market to deliver information not relevant, not important or easily accessible elsewhere.

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 harmonized national administrative requirements across EU, but as long as EU legislation exists in addition to similar or even equal national regulations by the NRAs (eg in Austria: EGHD-VO (with separate registration process, different definitions of reportable products and contracts etc), Elektrizitäts-Energielenkungsdaten-Verordnung E-EnLD-VO 2014, Energiegroßhandels-Transaktionsdaten-Aufbewahrungsverordnung – ETA-VO etc.) and market participants are forced to double and triple reporting we clearly opt against any EU trading license regime.

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?

No, we do not think there would be any benefit. No one would start trading with a counterpart which does not have an ACER code, given the fact that this code is needed for reporting reasons.

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?

Yes.

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

No.

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.

The timeline should provide market participants at least six month implementation period after the final guidance has been published.

Thank you for taking our comments into consideration. If you have any further questions, please do not hesitate to contact us.

Yours sincerely,

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