



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market

1 October 2020

BACKGROUND NOTE

Commission Decision setting the fees due to the Agency for the Cooperation of Energy Regulators for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency

1. CONTEXT OF THE PROPOSAL

The objective of this Commission Decision is to transpose Article 32 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (“ACER Regulation”). In Article 32(1), at the request of European Parliament and Council, a new provision was introduced that states that fees shall be due to ACER for its tasks under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (“REMIT”).

The objective of REMIT is to enhance integrity and transparency of trading in EU wholesale energy markets for the benefit of European energy consumers. REMIT introduces a sector-specific framework for the monitoring of wholesale energy markets, with the objective of detecting and deterring market abuse, under which details of records of wholesale energy market transactions, including orders to trade, are efficiently reported by market participants (MPs), or third parties acting on their behalf, directly to the Agency at Union level. For this purpose, market participants who comply with certain additional criteria can register with the Agency as reporting parties. Reporting parties are also called Registered Reporting Mechanisms – RRM; they are registered pursuant to Article 11 of Commission Implementing Regulation 1348/2014 of 17 December 2014 (“REMIT Implementing Regulation”).

2. LEGAL BASIS

Pursuant to point (b) of Article 32(1) of the ACER Regulation, fees shall be due to ACER for “collecting, handling, processing and analysing of information reported by MPs or by entities reporting on their behalf pursuant to Article 8 of REMIT”. Pursuant to Article 32(2) of ACER Regulation 2019/942, the fees and the way in which they are to be paid, shall be set by the Commission.

The basic decision if fees are to be introduced has already been taken by the legislator. The legislator has also stipulated which costs are to be covered by fees. Article 32(2) sets clear conditions the fee scheme needs to fulfil: The fees shall be proportionate to the costs of the relevant services as provided in a cost-effective way and shall be sufficient to cover those costs. Those fees shall be set at such a level as to ensure that they are non-discriminatory and that they avoid placing an undue financial or administrative burden on market participants or entities acting on their behalf.

- **Choice of the instrument**

Given the envisaged relatively simple fee scheme compared to other agencies, its basic principles are outlined in the ACER Regulation itself, not in a Delegated or Implementing Act as is the case for other agencies, and the ACER Regulation does not include an empowerment for the Commission to adopt Delegated or Implementing Acts. Therefore, the fee scheme is to be established by a Commission Decision.

Since there are also reporting parties located in Norway and since reporting parties report data also on behalf of Norwegian market participants, the Commission Decision has EEA relevance.

3. RESULTS OF STAKEHOLDER CONSULTATIONS AND ESTIMATION OF IMPACTS

- **Open public consultation**

An open public consultation was launched on 8 June 2020 and stakeholders had time to contribute until 31 August 2020. Their responses are available on the Commission's "have your say" website: <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12406-Commission-Decision-setting-the-fees-due-to-ACER-for-tasks-under-REMIT/public-consultation>. A factual summary of those replies is annexed to this note (annex I).

- **Stakeholder workshop on 15 July 2020**

On 15 July 2020 a workshop (virtual, using Webex) took place to which all RRM as well as associations representing RRM or market participants had been invited. A report on the workshop including the presentations is annexed to this note (annex II).

- **ACER's Administrative Board and Board of Regulators**

The planned fee scheme was outlined in the context of a discussion on ACER's budget in a meeting of ACER's Administrative Board (AB) on 18 June 2020. AB members were consulted in written form on the draft provisions from 10 to 17 September 2020. Feedback was provided by e-mail and taken into account.

The Commission informed the Board of Regulators (BoR) about the preparation of the fee scheme in the BoR meetings on 13 May and 17 June 2020. In the meeting on 16 July 2020 the Commission and ACER presented their proposal for the fee scheme in form of the presentation given a day earlier at the stakeholder workshop (see Annex II). At the meeting on 16 September 2020 the BoR discussed the draft provisions which were provided as meeting document. On 22

September 2020 the BoR submitted jointly agreed written comments to the Commission, which emphasise that, in principle, the BoR welcomes the fee scheme as planned, especially after the changes compared to the proposals presented on 16 July 2020. The BoR also stresses that the introduction of the fees must not lead to a reduction of the EU contribution to ACER.

- **Estimation of impacts**

The scope of financially burdened external stakeholders is rather narrow:

1. 118 RRM (as of September 2020) registered by ACER pursuant to Article 11 of Commission Implementing Regulation 1348/2014 of 17 December 2014 on data reporting implementing Article 8(2) and Article 8(6) of REMIT, who report data directly to ACER and who will need to pay the fees.
2. Market participants registered under REMIT by national regulators (both those which are reporting parties themselves and those which report via other reporting parties, in total around 14000 of which around 8700 are reporting transaction records¹) since they will at least indirectly have to cover the costs reporting parties will have due to the fee scheme.

Beyond RRM and market participants financial impacts can be considered negligible given the low total amount of costs to be covered by fees compared to the size of the energy sector.

Based on a data projection for 2020 and calculating in the possible impact of BREXIT, the fee scheme would have the financial impact in 2021 presented in the tables below. The data projections for 2020 are extrapolated from the records reported until 1 September 2020 by multiplying the number of records with 1.5; such multiplication scales the figures from the eight month period to twelve month period without adding any new information like new RRM or new MP reporting. To assess the potential impact of Brexit, the figures excluded any record linked to wholesale energy product related to supply or transportation of electricity or natural gas in the UK. However, in case an MP registered in the UK traded a wholesale energy product with delivery in the EU-27, such record was included in the estimate.

Total amount of collected fees²: EUR 8,333,500.-

¹ According to Article 4(1) and (2) of the REMIT Implementing Regulation, MP only active in intragroup contracts and contracts for balancing services have to register with a national regulatory authority, but do not have to report data to ACER on a regular basis as this data is only reportable if ACER requests it in accordance with Article 4(1) of REMIT.

² This figure only includes fee income from RRM reporting transaction records. Additional fee income of EUR 9,000 would come from each of the currently 31 of the 118 RRM only reporting fundamental data. The total amount of fee income from those RRM will depend on which of them will continue to report such data themselves and which may in the future report via other RRM acting as service providers.

Direct financial burden of RRMs

Fee interval [EUR]		Number of RRM
	< 20,000	38
20,000	50,000	23
50,000	250,000	18
250,000	500,000	5
> 500,000		3
Number of RRM reporting transaction records		87

Statistics	Fee [EUR]
MEDIAN	21,750
MEAN	95,787
Total collected	8,333,500

Indirect financial burden of market participants (if RRMs would apportion the fees entirely)

Fee interval [EUR]		Number of MP
250	300	4,722
300	500	409
500	1,000	1,839
1,000	5,000	1,445
5,000	10,000	125
10,000	25,000	94
25,000	50,000	16
50,000	100,000	6
Number of market participants reporting transaction records		8,656

Statistics	Fee [EUR]
MEDIAN	275
MEAN	963

4. THE CONTENT OF THE COMMISSION DECISION

• The basic structure of the fee scheme

1. The total costs to be covered by fees are identified in the programming document adopted by ACER's Administrative Board at the end of each year.
2. At the beginning of the year, ACER calculates the fees to be paid by each RRM based on data from the previous year. The fees consist of three components:
 - i) A flat enrolment fee component;

- ii) A transaction records-based fee component, depending on the number of market participants reporting via the RRM and on how many records they generate at different organised market places or outside organised market places;
 - iii) An amount to balance differences between the transaction records-based fee component paid in the previous year and the transaction records-based fee component that would have been paid according to the actual reporting in that year.
3. Should the total amount of fees to be paid by all RRMs exceed the total eligible costs, the individual amounts payable by each RRM are reduced pro-rata.
 4. ACER sends out invoices (debit notes) to reporting parties.
 5. The same cycle is repeated each year.

Objective of this design of the fee scheme is to ensure that:

1. RRMs are able to estimate the amount of fees they will need to pay based on the information provided in the Commission Decision
2. Fee income will not exceed eligible costs (no need to set aside fee income for next year).
3. Fee income will cover most of the costs which are to be covered with fees: The difference between those costs and fee income is limited to cases of reporting parties deregistering (in 2021) or to cases of unenforceable debts.

- **Explanation of the provisions in the Commission Decision**

Articles 1 and 2 are the usual provisions on subject matter, objectives and definitions.

Article 3 stipulates that ACER needs to identify costs eligible for being funded by fees and to determine the amount which shall be covered by fees in its programming document which is adopted by the end of each year. This amount cannot be higher than the total eligible costs, but need to be lower than the EU budget contribution. The latter has the purpose to ensure that ACER continues to be “mainly financed from the general budget of the Union” (recital 37 of the ACER Regulation). To ensure transparency, Article 3 also requires ACER to report in the Consolidated Annual Activity Report (CAAR) how much fees were collected and how they were spent.

Article 4 lays down that each RRM has to pay a yearly fee and how those fees are to be paid. Specific rules apply to newly registered RRMs: Half of the flat enrolment fee component needs to be paid upfront regardless if the application for registration is successful, since ACER also incurs costs in case the application needs to be rejected due to the failure of the applicant to meet the requirements pursuant to Article 11 of the REMIT Implementing Regulation.

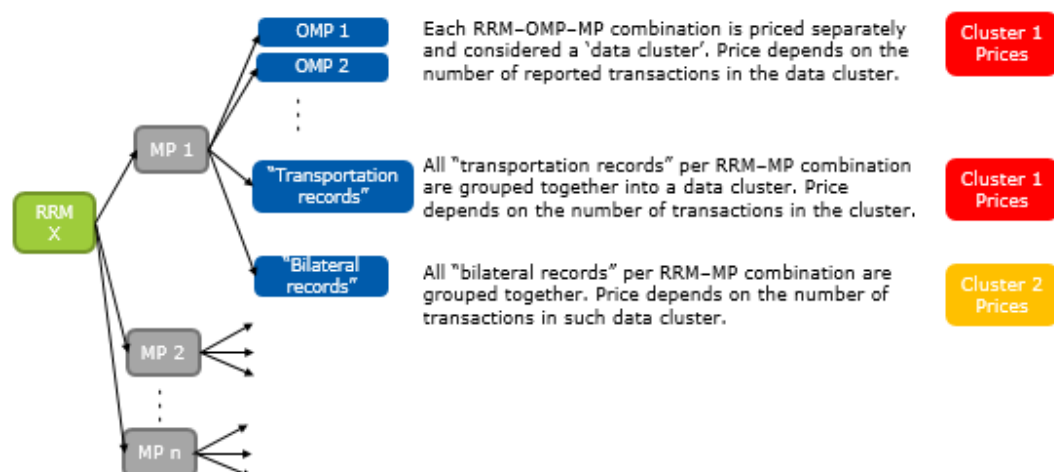
Article 5 lays down how the yearly fees the different RRMs need to pay are calculated. Fees are the sum of:

1. A flat enrolment fee component of EUR 9,000 which is the same for each RRM.
2. Except for those RRM which only report fundamental data, a transaction records-based fee component, depending on the number of market participants reporting via the RRM and on how many records they generate at different organised market places or outside organised market places.
3. An addition or a deduction to balance differences between the transaction records-based fee component paid in the previous year and the transaction records-based fee component that would have been paid according to the actual reporting in that year. This is especially relevant in the case of new RRMs whose fee in the first year cannot be based on their reporting in the previous year. RRMs will as minimum have to pay the flat enrolment fee component.

Should this calculation result in the total amount of to be collected fees to be higher than the determined amount which shall be covered by fees, the fees calculated for each RRM are reduced proportionally.

Article 6 specifies the calculation of the transaction records-based fee component.

For each RRM the number of its “data clusters” are identified. A data cluster consists of all transaction records a specific market participant generates at a specific organised market place. All activities of a specific market participant taking place outside an organised market place (OMP) are considered as a single data cluster. Transaction records related to transportation of electricity or gas are considered separately, with all such activities of a specific market participants being considered as a single data cluster, regardless if they take place outside or at OMPs. Then for each cluster the fee subcomponent is identified, which depends on the number of transaction records. The fee subcomponents for transaction records stemming from outside organised market places are more costly than those from organised market places, since standardised transactions at OMPs entail lower marginal costs for ACER than non-standardised transactions.



To provide an example: Assuming two market participants report via an RRM; market participant 1 creates 50,000 transaction records at OMP X and 8000 transaction records at OMP

Y; market participant 2 creates 80 million transaction records at OMP Y and also concludes 50 contracts outside an OMP. The total of the subcomponent fees (listed in the same order) for this RRM would be $1000 + 500 + 8000 + 250 = 9750$ EUR. Together with the flat fee component, the RRM would need to pay a total fee of 18,750 EUR.

In case of a newly registered RRM, there is no data from previous year for calculating the transaction-records based fee component. Therefore, an amount per calendar day from the time of registration until the end of the year needs to be set. The chosen EUR 65.- per day would, in theory, amount to EUR 23,725.- over a whole year. This is around $\frac{1}{3}$ of the estimated arithmetic mean of transaction-records based fee component an RRM is estimated to pay in 2021 and around 50% higher than the comparable median. The set amount is however still appropriate, as new RRMs are mainly expected to stem from mergers of existing RRMs making it likelier that the number of records reported by these RRMs and thus the related transaction-based fee will be higher compared to those valid for existing RRMs. Should the actual reporting be different than reflected in this assumed amount, then this will be taken into account when calculating the fee in the following year.

Additional adjustments are needed also in the process of calculating the transaction-based fee for the RRM's second year of reporting. Since a newly registered RRM has not reported data for the whole of its first year as RRM, the volumes of those reported transaction records need to be extrapolated to a full year for the purpose of identifying the fee subcomponents and consequently calculating the transaction-record based component of the fee to be paid in its second year as RRM. For the purpose of calculation the correction amount, this transaction-records based fee component needs again to be adapted to the period in the first year the new RRM has actually reported data, since otherwise it would have to make an additional payment as if it was an RRM for the whole of the first year.

Article 7 sets out the rules in case invoices are not paid. Next to referring to the generally applicable provisions on enforcing debts, paragraph 2 provides ACER with the possibility to restrict services to those RRMs which are considerably overdue with paying the fee. This provision enforces Article 71 of Commission Delegated Regulation (EU) 2019/715 (the financial regulation for agencies) which stipulates that agencies should only provide services after fees are paid.

Article 8 provides for specific rules applying in 2021, the first year of the fee scheme, especially in order to provide RRMs with time to adapt: the settlement period of the invoices is roughly doubled (deadline at the earliest end of March) and RRMs which deregister until 31 March do not have to pay fees, but can continue to report data until end of June, hence market participants have time to find an alternative solution for fulfilling their duties under REMIT.

Article 9 requires the Commission to evaluate the fee scheme at the latest together with the evaluation of ACER's performance by 5 July 2024 pursuant to Article 45 ACER Regulation.

Article 10 stipulates that the Commission Decision takes effect only from 1 January 2021 onwards, with the exception of the provisions on identifying eligible costs and setting the amount to be covered by fees, since this will need to take place already in December 2020.

Annex I

Factual summary of the replies to the public consultation on the planned ACER Remit fees Decision

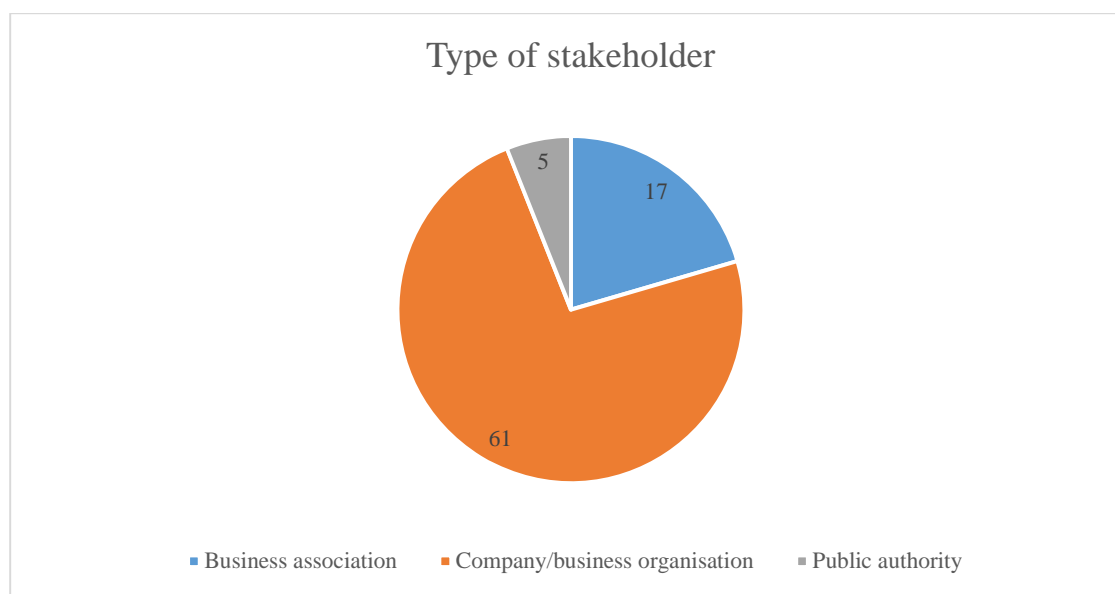
1. Introduction

This document summarises the contributions received to the public consultation on the Commission Decision setting the fees due to the European Union Agency for the Cooperation of Energy Regulators (“ACER”) for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (“REMIT fees”). The feedback period was open from 08 June to 31 August 2020. This public consultation was required under Article 32(2) of the ACER Regulation.³

A stakeholder workshop on the public consultation took place on 15th July 2020. It brought together around 150 participants representing key stakeholders: reporting parties registered with ACER (also called Registered Reporting Mechanisms or RRM)s and associations representing reporting parties or market participants (“MP”). DG Energy and ACER presented their proposal for a fee scheme, and stakeholders were given the opportunity to share their views on it. Minutes of the workshop were distributed among the participants.

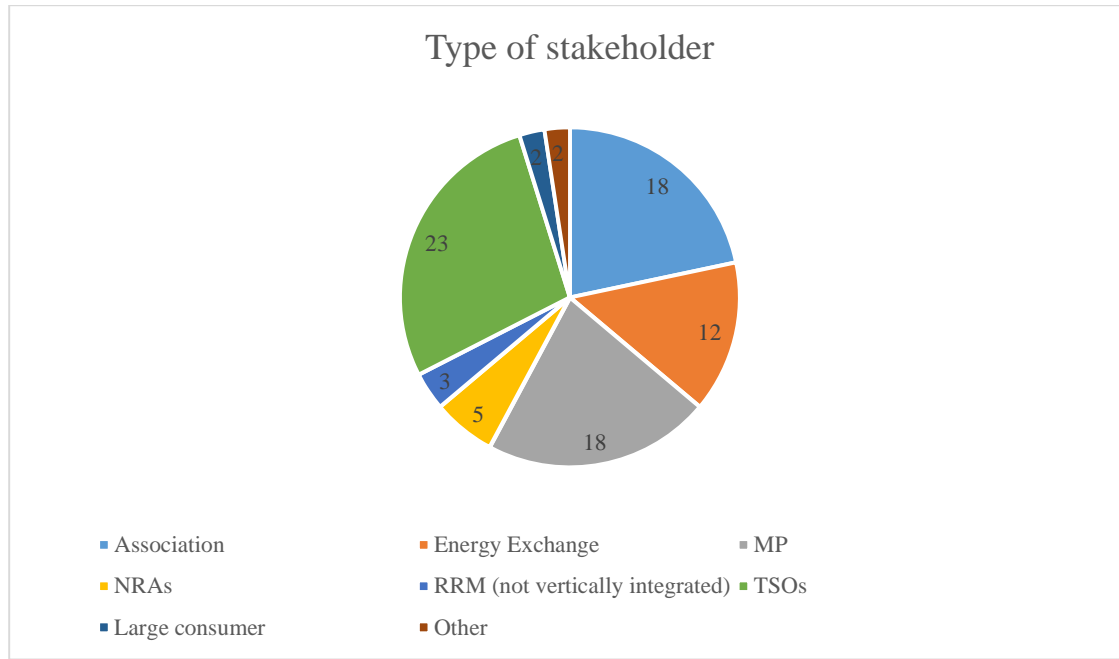
2. Overview on the received responses

- 83 responses were received: 61 from company/businesses organisation, 17 from business associations and 5 from public authorities.



³ Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators.

- The typology of stakeholders that responded to the public consultation was diversified: 23 Transmission system operators (“TSOs”), 18 MPs, 18 Business associations, 12 energy exchanges, 5 NRAs, 3 RRM not vertically integrated, 2 large consumers and 2 others.



- The top three countries in terms of respondents were Germany, Belgium (with a high share of business associations) and Spain.
- In terms of size, the majority of the responding organisations were large organisations with 250 employees or more (37.21 % of the responding organisations).

3. Key messages from the respondents received by theme

a. Overall amount to be covered by REMIT fees each year

The majority of the stakeholders emphasised the collection of REMIT fees by ACER as an important element to ensure adequate financing of the REMIT activities that ACER is performing, so that an effective oversight of wholesale energy markets in the EU can contribute to the integrity and transparency of these markets.

The vast majority of the respondents argued that the amount to be covered should be clearly defined and calculated on a **multiannual basis (3 to 5 years)** to provide transparency and predictability. Some respondents also called for a fixed-period cap for fee increases so market participants can forecast the costs involved. Respondents highlighted the importance of a **stable fee scheme**.

Many respondents pointed out that the scheme should be subject to **adequate monitoring and oversight**. With this regards, some respondents called for a public consultation on the ACER programming document and the creation of a dedicated Stakeholder Expert Group on REMIT fees. Additionally, some pointed to the publication of an annual detailed report on the REMIT incurred costs to be covered by fees and the fee revenues with reference to the previous year.

Respondents argued that the **REMIT tasks** covered under the fees scheme should not go beyond the legal scope of Article 32 (1) (b). A number of respondents pointed out that they expected an **improvement of ACER services**, as for example the creation of a tool to calculate reported transactions and the due Remit fees. Others also expressed that ACER should be given the means to respond as quickly as possible to the specific questions posed by market players.

The vast majority of the contributions highlighted the importance of addressing possible situations of fee surpluses or fee insufficiencies. Some suggested that underbudgeting could be compensated by contributions from the EU budget.

A few respondents suggested that the **penalties imposed for non-compliance with REMIT** should serve to finance the Agency's costs for this specific function.

Several respondents highlighted the importance of including the **Brexit impact** on the estimation for REMIT fees.

A few respondents contested the legality of the fees scheme and argued that REMIT tasks should be fully financed by the EU Budget.

b. Fees to be paid by RRMs

Some stakeholders supported that the fees should be collected from RRM as it is more efficient. By contrast, many respondents argued that the fees should be collected from the MP as they are the ones who are responsible for reporting. From those, several supported RRM collecting the fees from MP as intermediaries and not as the addressees of the fees. Along the same lines, some suggested that the responsibility for paying the fees and the mechanism for collecting the fees must be considered separately. Several advocated that ACER must settle a detailed inventory per MP and RRM on their reported data and used REMIT services.

Regulated stakeholders also insisted that the Decision needed to ensure that all REMIT fees can be fully recovered and therefore explicitly recognised as **allowed revenues in the national regulatory** frameworks.

Some respondents also argued that there will be a **significant risk of distortion of competition between different types of RRM**s should the fee be charged directly to RRM (benefitting big players versus smaller ones). Respondents also indicated that imposing fees on RRM that are Organised Market Places (“OMP”) is discriminatory since those entities cannot potentially avoid paying the fees for a service they are obliged to offer.

c. Calculation of fees

Many respondents supported the envisaged fee model presented during the Stakeholder workshop, a **mixed RRM-OMP-MP** model, that includes an enrolment fee and a records based fee.

As for the enrolment fee, some respondents argued against it. They mostly claimed that the proposed **enrolment fee** could increase market concentration at RRM level, reducing the RRM competition on the services, and increasing the risks of a dominant position by those agents. They also claimed that it discriminates against smaller RRM. Others proposed to reduce the amount of the enrolment fee.

Concerning the **records based fee**, many stakeholders pointed out that the fee calculation must not discourage trading on regulated and transparent trading venues. To avoid this, some respondents suggested excluding orders from the fee calculation. It was argued that transparent trading via exchanges often implies the placing of multiple orders and therefore the number of records are typically far higher on exchanges than via bilateral trading. Transparency shouldn't be a factor for negative discrimination.

Furthermore, respondents asked for a distinction in the formula between **standardised and non-standardised transactions** in order to reflect the real cost incurred by ACER for each type of contract. It was argued that it is much more complex to analyse and process a non-standard contract than a standard contract. Moreover, a few respondents also argued that the counting of **lifecycle events** should be excluded from the calculation of the fees because it risks distorting competition between RRM. Others also asked for the exemption from the fees of the transportation transactions. A minority was not convinced of why fundamental data should be excluded from the record based fee.

A minority of respondents supported a fixed fee model for the sake of simplicity.

d. Payment of fees

The majority of the respondents supported an **ex-post calculation of the fees**, although some supported the ex-ante calculation proposed. It was argued that the proposed ex-ante approach for charging the fee would expose RRM to an unacceptable financial risk. Some proposed that the enrolment fee (fixed component) is charged upfront, but that the records based fee (variable component) is charged ex-post. Some respondents suggested the reform of the Financial Regulation of ACER or the use of its exceptional circumstances clause to enable an ex-post fee collection.

Several pointed that adequate time is needed for the implementation of the fees in the first year as specific procedures will need to be implemented by RRM.

Some proposed that the fees should be paid in monthly or quarterly instalments. Respondents also advocated for a longer settlement period of 30 days to enable RRM to collect the fees from MP.

Annex II



EUROPEAN COMMISSION
DIRECTORATE-GENERAL FOR ENERGY

Directorate B - Internal Energy Market

Summary minutes – ACER REMIT fees stakeholder workshop

Wednesday, 15 July 2020 from 09:30 to 12:30

WebEx session

The workshop complements the public consultation (open from 8 June to 31 August 2020) on the fees that will be due to ACER under Article 32 of the ACER Regulation (EU) 2019/942 (<https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/12406-Commission-Decision-setting-the-fees-due-to-ACER-for-tasks-under-REMIT/public-consultation>). Invited to the workshop were stakeholders financially affected by the planned fees: Primarily these are the around 120 reporting parties (also called Registered Reporting Mechanisms or RRM)s registered by ACER pursuant to Article 11 of Commission Implementing Regulation (EU) 1348/2014 on data reporting under Regulation (EU) 1227/2011 on wholesale energy market integrity and transparency (REMIT). Those entities report data directly to ACER and will need to pay the fees. Invited were also key EU associations representing, inter alia, RRM)s as well as market participants (MP)s who report data via RRM)s, since they will at least indirectly have to cover the costs RRM)s will have due to the fee scheme. Around 70 entities were represented in the workshop.

The summary minutes follow the structure of the workshop's agenda:

1. Welcome and introduction by DG Energy & ACER
DG Energy and ACER highlighted the importance of achieving the European Green Deal as well as economic recovery post COVID-19, for which proper market functioning is key. In this context, REMIT fees will contribute to maintaining market integrity and transparency.
2. Setting the fees due to ACER for tasks under REMIT – presentation by DG Energy & ACER Q&A
DG Energy and ACER presented their proposal for a fee scheme (see presentation in annex I). During the subsequent Q&A DG Energy and ACER addressed the questions and contribu-

tions that had been submitted during the presentation by the meeting participants:

- Timing of the fee scheme
 - Fees will be levied from 2021 onwards.
 - The plan is to have a stable scheme for at least 3-4 years.
- Timing of the invoices (ex-post or ex-ante?). What if an MP changes the RRM via its reports during the year? Would the fixed fee part remain stable if some RRM resigns as RRM?
 - The Commission Delegated Regulation (EU) 2019/715, the financial regulation for EU agencies, stipulates that where fees are charged, the services are only to be provided once the fees are paid.
 - This means that the invoices would have to be sent out at the beginning of each year and the records-based fee would be based on the records from the previous year.
 - Special provisions will be needed for new RRM.
 - The enrolment fee is calculated per RRM, it does not change with the registration or de-registration of other RRM.
- Transparency about the fees to be paid by individual RRM and how they pass the costs on to MP
 - The aim is to provide a fee scheme which provides precise guidance so that the RRM should be able to calculate the fee estimates themselves.
 - The RRM should be transparent about how they pass on the costs to the MP.
- Scope of the fee scheme
 - Also RRM only reporting fundamental data will have to pay the enrolment fee. Such RRM also generate costs for ACER and the activities and services performed by ACER are similar for all RRM. Therefore, no different fee levels (“buckets”) are planned for the enrolment fee.
 - Fundamental data reporting itself (beyond the enrolment fee) will not be charged. Reason is that REMIT is a reporting regime for records of transactions, including orders to trade. Fees would be calculated based on the transactions listed in tables 1-4 in the annex to the Commission Implementing Regulation (EU) 1348/2014.
 - For example, RRM which are TSOs that only submit Final Nominations (LT, DA and ID) or results of a primary explicit allocation would only pay the enrolment fee.
- Why do you distinguish between different organised market places (OMP)? From our point of view it is only one parameter in the reported data which is different.
 - ACER’s data analysis, including data quality analysis, also haven to be taken into account here. Big market traders will be present on many trading places,

which is why the OMP element was introduced in order to add depth to the versatility. ACER's work does not only depend on the amount of data, but also on how much effort it takes to process, aggregate, combine and analyse the data.

- Could the cap in the calculation of the records based fee be on group level?
 - This is not considered. REMIT and the Commission Implementing Regulation (EU) 1348/2014 always reference individual MPs, not groups of MPs.
- The proposed fee scheme is not proportionate! For small MPs the cost for REMIT reporting is significantly higher per transaction compared to MPs submitting most of the transactions.
 - Several principles have to be balanced – fees have to be proportionate to ACER's costs, but also without creating an undue burden on individual market players. For small MPs only reporting through one RRM/OMP, the records-based fee component would only amount to EUR 250.
 - There are different cost drivers: registration as an RRM and maintaining this registration as well as the ongoing reporting of data and its follow-up by ACER. RRMs reporting more records will pay a higher records-based fee, but the fixed enrolment fee is the same for all, because ACER performs similar activities for all RRMs. This is how proportionality is ensured.
 - In any case, fees almost exclusively based on the number of records would mean an undue burden for some market players which should be avoided according to the ACER Regulation. In addition, ACER could be perceived as losing neutrality towards the market if only a few market players pay almost all of total REMIT fees – this would be the outcome of a purely records-based system.
- REMIT treats the direct reporting by MPs (as RRMs) and the use of third party RRMs as equal options. The fixed fee of EUR 15,000 will discourage the RRMs=MPs=TSOs to report their data directly to ACER and as such the proposed fee scheme will destroy the current reporting setup. We see the enrolment fee as a barrier for new-coming RRMs.
 - Costs are incurred through the registration and the continuous oversight of the registration of an RRM to ensure operational reliability for all reporting parties. With that in mind, EUR 15,000 is considered appropriate.
- Why haven't you considered a fee during CEREMP registration plus a yearly renewal fee? Buckets for different MP types could also be applied so the proportionality would be ensured.
 - The registration of MPs through CEREMP is within the purview of the national regulatory authorities (NRAs), not ACER. Please also note that some NRAs are already charging fees for the registration as an MP at national level.
- Why also orders are taken into account for calculating the records-based fee component, also since orders are not reported in a comparable manner for every product/market?

- Since the reporting of orders is stipulated in REMIT and the Commission Implementing Regulation (EU) 1348/2014, it is part of ACER's costs. Cost-proportionality is to be observed.
- Considering that the invoice has to be accepted by the RRM, we suppose that a detailed situation per MP will be attached in order to be double-checked by the RRM (and to provide proof to the OMPs and MPs on demand).
 - This is currently under assessment.

3. Presentations by EFET and by Europex

EFET (European Federation of Energy Traders) and Europex (Association of European Power Exchanges) presented their views on the planned fee scheme (see their presentations in annexes II and III).

4. Contributions from other stakeholder associations representing reporting parties or market participants

ENTSOG (European Network of Transmission System Operators for Gas), ENTSO-E (European Network of Transmission System Operators for Electricity), Eurelectric (Union of the Electricity Industry) and IOGP (International Association of Oil and Gas Producers) shortly presented their views on the planned fee scheme.

- ENTSOG's opinion on the REMIT fee scheme is influenced by the fact that they represent TSOs (which are predominantly also RRM) reporting Table 4 and fundamental data. ENTSOG's position is outlined on a slide (see annex IV).
- ENTSO-E's position is very similar to the one of ENTSOG. The TSOs are already very involved in collecting data from electricity markets and providing it to ACER; the special roles of the TSOs should be taken into account. ENTSO-E also highlighted the potential financial risks to which the RRM could be exposed if the MPs do not pay their REMIT fees.
- Eurelectric stressed that it is essential to have a transparent and predictable system, and that fundamental data should be included in the REMIT fee scheme. Transparency is also needed with regard to ACER's budget and funding.
- IOGP stressed that it is important to keep the REMIT fee scheme as simple and predictable as possible, and that the principle of proportionality must be observed. ACER and the Commission should carefully consider the implementation of any fee structure that could increase the reporting concentration at RRM and OMP levels.

The Chair invited the previous presenters to respond to the contributions:

- EFET reiterated their, in principle, supportive view of the planned fee scheme as presented by DG Energy and ACER and their expectation that such a fee scheme would not impact the market negatively.

- Europex stated that they would like to see stakeholder involvement also during the next steps towards the adoption of a Commission Decision
- ENTSO-G acknowledged that there is a burden for ACER when a new RRM has to register and also that activities have to be carried out to assure compliance, but stressed that RRM that have no changes in their activities, number of MPs, or profiles of the reported data should not have to pay the same cost year after year compared to the RRM that do change their reporting.

5 Feedback from the audience

There were no requests from the audience to provide further feedback.

In response to the position of Europex that while RRM can collect the fees from MPs on behalf of ACER, they themselves should not be charged, ACER noted that there are examples of other transaction reporting regimes, such as EMIR and MiFID, where only the parties that are directly registered with the authority collecting the data are charged, and that then these costs are distributed.

6 Conclusions and next steps – DG Energy

DG Energy thanked everyone for participating and summarised conclusions from the workshop:

- All stakeholders have an interest in a working REMIT implementation and there is broad understanding that it will be difficult to find a fee scheme which satisfies everyone.
- RRM collecting fees from MPs on behalf of ACER, but without being liable for successfully levying revenues, is difficult to envisage. Ex-post invoicing would be against the applicable financial regulations which stipulate: first fees, then services.
- What needs to be further considered is especially if there is a need to align fees paid ex-ante with the actually reported data during the year and, if yes, how this could be done transparently and in a simple way.
- How to address the diversity of the reporting parties and type of records also needs to be further considered. The same applies to ensuring transparency as regards the definition of the eligible costs to be covered by fees and to the question if specific arrangements are needed for the first year.

Annex I: Presentation DG Energy and ACER



Agenda

- REMIT fees overview
- REMIT total eligible costs
- REMIT fee principles
- REMIT reporting landscape
- Modelling considerations
- Envisaged REMIT fee model

Fees shall be due to the Agency for the collecting, handling, processing and analysing of information reported by market participants or entities reporting on their behalf pursuant to Article 8 of Regulation 1227/2011 (REMIT).

Fees shall be proportionate to costs, **sufficient** to cover those costs, **non-discriminatory** and **avoid undue burden**.

The revenue received by ACER shall **not compromise its neutrality, independence or objectivity**.

Cf. Articles 31(5) and 32 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators ("ACER Regulation")



3

Preparation of Commission Decision

- Public consultation launched: 8 June
- Discussion in ACER Administrative Board: 18 June
- Stakeholder Workshop: 15 July
- ACER Board of Regulators: 16 July
- Public consultation ends: 31 August
- Consultation of Administrative Board: early September
- ACER Board of Regulators: 16 September
- Start of formal adoption process: mid September
- Adoption: early November

4

Basic Structure of Fee Scheme

- ACER identifies total eligible costs in Programming Document to be adopted each December, based on EU budget for next year.
- ACER calculates fee for each reporting party, based on:
 - » A fix "enrolment fee"
 - » A "records-based fee"
- Should the sum of all fees be higher than the total eligible costs, then the individual fees are reduced pro-rata.
- ACER sends out invoices in January.

5

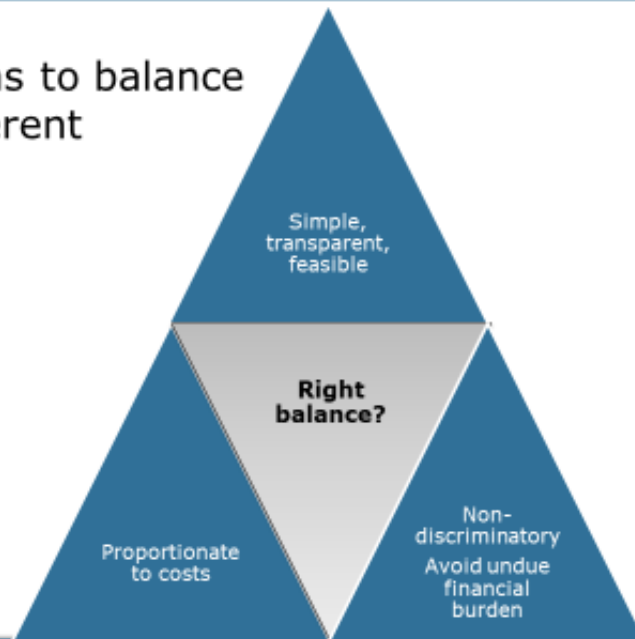
- The basis for the calculation of the total annual REMIT fees in year (n) shall be the estimate of REMIT expenditure as included in ACER's budget for that year (as set out in Programming Document).
 - » Fees will cover both HR and IT (non-HR) REMIT expenditures.
 - » Annual adjustment of REMIT expenditure depending on development of IT costs and the HR (number of posts) granted by the Budgetary Authority.
 - » HR expenditures are based on averages of the Commission per each type of staff and include overheads.
 - » REMIT expenditures in year n = 2021 are estimated at 8.8 million EUR.
- REMIT expenditures are driven by:
 - » the registration and ongoing supervision of reporting parties (RRMs);
 - » the number of Market Participants (MPs) which RRM report for;
 - » the number and versatility of records of transactions reported to ACER.



6

REMIT fee principles to respect

The model has to balance
between different
principles ...



7

REMIT reporting landscape

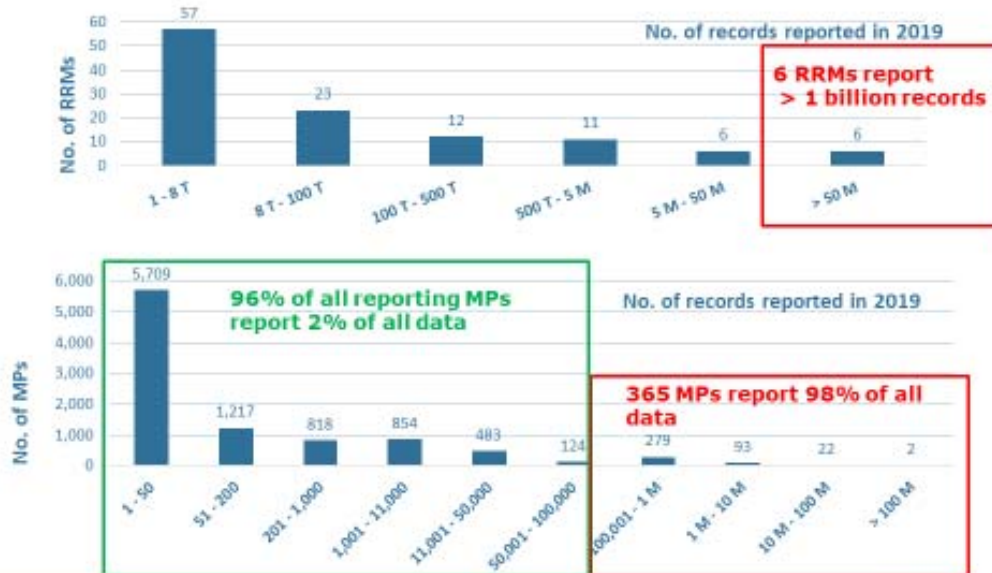
- In 2019, entities reported 1.2 billion of Table 1 records, 230 thousand of Table 2 records, 1.8 million of Table 3&4 records and 2.5 million of Fundamental records.
- Currently 120 RRM are registered to report data to ACER.
 - » 110 RRM reported data in 2019, 13 of them reported only fundamental data.
- In 2019 9,601 MPs reported T1-T4 records of transactions.
 - » Records were reported through 97 RRM.
 - » Some MPs reported through more than 1 RRM, resulting in 15,722 RRM-MP pairs.
- Transactions took place on 65 Organised Market Places (OMP), even if most MPs traded only "off-OMP".

OMP stands for organised market place, RRM for registered reporting mechanism (= reporting party) and MP for market participant.

8

Modelling considerations (1)

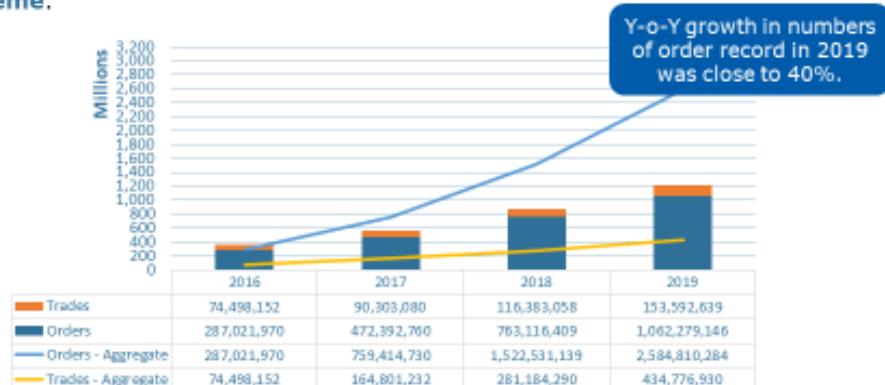
The model has to work well for very "diverse" reporting entities, where 5% of entities report more than 95% of the data.



9

Modelling considerations (2)

The number of records (and with them costs) is expected to grow and the number of orders grows faster than number of trades. **Considering only trades would result in less proportionate model and may introduce instability in the fee scheme.**



Since the model should reflect the costs for collection, handling, processing and analysing information it should not consider transactions' notional amounts.

+ Notional amounts are more prone to data quality issues.

10

Modelling considerations (3)

Ideally, model and fee collection should also have

- limited policy impact;
- no impact on MP registration;
- limited impact on reporting of records.

The fees should be charged to RRM. The Agency should not interfere in the RRM's cost allocation towards MPs, but should aim at fee transparency.

While the REMIT data are reported on behalf of MPs, the Agency is only collecting REMIT information through RRM, therefore the Agency can only provide data reporting services to these entities.

11

Envisaged REMIT fee model (1)

Mixed RRM-OMP-MP model


- The overall REMIT fee is a sum of **RRM enrolment fee and records-based fee**.
- **Each RRM pays a fixed annual RRM enrolment fee [15,000 EUR].**
 - » This fee is paid annually as well as at the initial registration.
 - » The fee covers costs of the regulatory effort (1) necessary for the assessment and examination of the application and (2) necessary to ensure compliance with the technical and organisational requirements.
- **Each RRM pays an annual records-based fee** which depends on the **number** of submitted records of transactions as well as their **diversity and complexity**.
 - » Complexity is driven by the number of different MPs using RRM services as well as the number of different trading channels used by these MPs.
 - » Records-based fee is charged only for Table 1 to Table 4 records.

12

Envisaged REMIT fee model (2)

• How is the RRM records-based fee component calculated?

- » This fee component depends on the market specific data sets reported per MP.
- » Market specific data set reported per MP means all records of transactions, including orders as well as all lifecycle events, reported on behalf of an MP and executed at a specific market place (an OMP or other wholesale energy trading market place).
- » Records traded "off-OMP" are grouped and treated as reported on one fictitious market.
- » The exact amount paid for each market specific data set depends on the number of such records reported.



Number of records of transactions, including orders to trade, per RRM per market-specific data set per MP	Fee (EUR)
1 to 1,000	250
1,001 to 10,000	500
10,001 to 100,000	1,000
100,001 to 1,000,000	2,000
More than 1 but less than and including 10 million	4,000
More than 10 but less than and including 100 million	8,000
More than 100 million	16,000

13

Envisaged REMIT fee model (3)

• Fee calculation – example

- » RRM 1 submitted the following number of records:

	MP A	MP B
OMP X	150	200
OMP Y	1120	120 million
Bilateral deals		2,000
Records based fee (EUR)	500+250 = 750	250+16,000+500= 16,750

RRM 1 pays
15,000 EUR enrolment fee +
17,500 EUR records based fee =
32,500 EUR fee in total

- » RRM 2 submitted the following number of records:

	MP A	MP C
OMP X	55,000	
OMP Z	250,000	8 million
Records based fee (EUR)	1,000+2,000=3,000	4,000

RRM 2 pays
15,000 EUR enrolment fee +
7,000 EUR records based fee =
22,000 EUR fee in total

14

• **Fee estimates using 2019 data and envisaged fee levels**

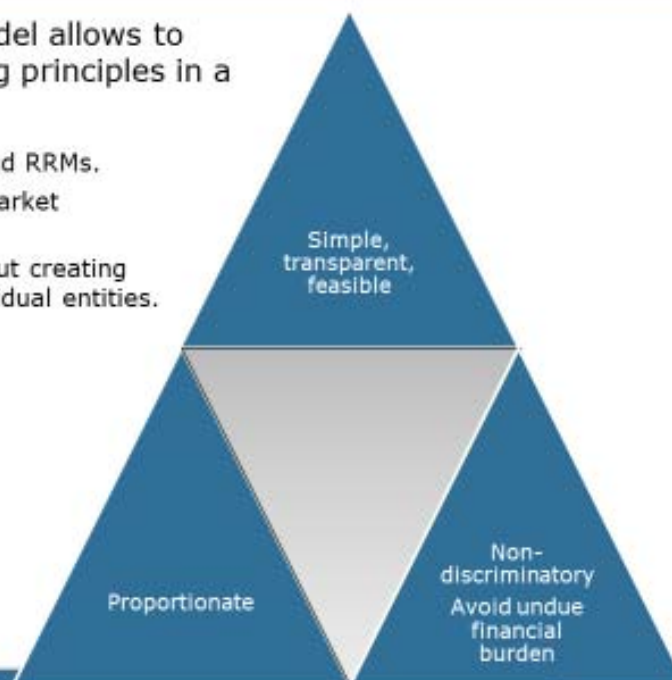
Fee interval (EUR)		Number of RRM's paying the total fee in the interval
-	20,000	52
20,000	50,000	39
50,000	250,000	20
250,000	500,000	6
500,000	-	3
MEDIAN amount paid (EUR)		22,625
MEAN amount paid (EUR)		76,033
Total (before pro-rata reduction)		9,124,000
Pro-rata reduction to stay within limit of EUR 8.8 million eligible costs would mean EUR 2700 less for each RRM [(9.124m-8.8m)/120]		

- Majority of the RRM's would pay less than 20,000 EUR.
- For RRM's paying larger amounts, this is due to one or more of the following:
 - » they report for many market participants,
 - » they report large amount of records,
 - » the reported data is related to trading via various different trading channels.

15

The RRM-OMP-MP model allows to comply with conflicting principles in a balanced way.

- » Transparent for MPs and RRM's.
- » Negligible impact on market liquidity.
- » Proportional, but without creating undue burden for individual entities.



16

Thank you for your attention!



www.acer.europa.eu
EU-ACER-REMIT-Fees@ec.europa.eu

Annex II: Presentation Europex

Five Recommendations for the Design and Implementation of REMIT Fees

DG ENER-ACER Workshop

Brussels, 15 July 2020

Christian Baer | Secretary General

Europex

Association of European Energy Exchanges

DG ENER-ACER workshop on REMIT fee design and implementation | Brussels, 15 July 2020

Europex

Europex members



Borzen



Introduction: non-discrimination, proportionality, predictability & minimised market and liquidity impacts

- Inappropriately designed REMIT fees risk causing a **significant negative impact on trading behaviour, market liquidity and general market development**. They may further distort the regulatory **level playing field** between various affected actors, including RRM, and lead to cross-subsidisation and unfair competition between MPs or RRM. The ultimate fee design must therefore **ensure that any such impacts are minimised as much as possible**.
- In addition, the REMIT fee levels should be **predictable, avoid any undue financial and administrative burden and be communicated transparently and sufficiently in advance**.
- Importantly, the REMIT fee design and the practical implementation of the fees need to be aligned with the wider **EU transparency and market policy objectives**, including the G20 Pittsburgh Commitments. Trading on transparent, efficient and secure regulated markets should be explicitly encouraged rather than the less transparent and less regulated alternatives such as OTC and bilateral trading.

2

Five Recommendations for the Design and Implementation of REMIT Fees



REMIT fees should only cover operational costs and be strictly in line with the defined scope



RRMs can collect the fees from MPs for ACER but must not be charged themselves



The fee calculation formula should focus on transaction events and volumes per MP



Different fee levels for transaction reporting of standardised & non-standardised contracts



The fee should only be leveraged ex-post to ensure proportionality and minimise the financial risks of RRM

3

1. REMIT fees should only cover operational costs and be strictly in line with the defined scope

- ACER should **be mainly financed from the general Union budget**.
- **Only relevant operational costs should be covered**. REMIT infrastructure costs (i.e. fixed costs related to investments) and other out of scope costs such as ACER support to NRAs must not be recoverable by fees.
- The total amount to be collected through fees should be **proportionate** and should not exceed the legal scope of covered activities.
- The fees should be proportionate to the occurred costs and the actual activities of Market Participants to **ensure non-discrimination and minimise market impact**.
- **The suggested 8.8 EUR million figure for the first year should be thoroughly reviewed and reduced** to a more appropriate level, possibly also with a higher contribution from the Union budget.

4

2. RRM can collect the fees from MPs for ACER but must not be charged themselves

- **The responsibility for paying the fees and the mechanism for collecting them** constitute two fundamentally distinct issues and **must be considered separately**.
- As outlined in Article 8 of REMIT, the 'overall responsibility' to report is with Market Participants (MPs). Hence, **the REMIT fee should be levied directly to MPs** and not to RRM who **merely act as facilitators and aggregators of the system**. Levying a fee on RRM and not MPs directly would be disproportionate, discriminatory and place an undue financial burden on RRM.
- Given the 'overall responsibility' of MPs, **the financial liability should remain with the MPs throughout the fee levying process** until confirmed full payment of the fee to ACER.
- In addition, OMPs, unlike non-OMP RRM, cannot discontinue their activity under REMIT which in itself is discriminatory and may eventually lead to a **situation where the REMIT fees would be mainly borne by OMPs**. Levying the fees directly to MPs will avoid this.

5

3. The fee calculation formula should focus on transaction events and volumes per MP

- **A clear and simple formula is needed, and the calculation should be done by ACER for each MP.** Should the latter not be possible, at least the metrics and the data for the per MP calculation must be provided by ACER to all fee-collecting entities.
- The REMIT fees should be **applied per MP** and focus on the **number of transaction record events** as well as the related **traded volume**. This would ensure a high level of proportionality without losing the benefits of a simple, easy to calculate fee.
- The fee formula needs to distinguish between standardised- and non-standardised contracts and apply different rates to them. [See next slide for more details.]
- **Orders should not be considered for the fee calculation** as this is likely to have a significant negative impact on trading behaviour, leading to reduced order book depth and possibly to less overall trading.
- There are mixed views on whether a (small) fixed fee component could be appropriate or not.

6

4. Different fee levels for transaction reporting of standardised & non-standardised contracts

- **A standardised transaction entails lower marginal handling costs for ACER than a non-standardised one.**
- **The variable fee for standardised transactions should therefore be considerably lower than the fees charged for non-standardised transactions** in order to reflect the real cost incurred by each of them. This is important to respect the proportionality principle and to ensure that the fee design does not discourage trading on transparent, efficient and secure regulated trading venues.



7

5. The fee should only be leveraged ex-post to ensure proportionality and minimise the financial risks for RRM

- **Trading activity can be volatile** and is generally difficult to predict. In addition, **numerous changes occur throughout the year** in relation to the number of MPs, with some entering and others leaving the market, as well as MPs switching between or using several RRM with differing levels of intensity.
- Hence, the only way to ensure proportionality of the fees in relation to the actual trading and reporting activity of MPs is to **levy the fees ex-post**.
- Collecting REMIT fees from market participants will further result in a substantial cash flow. **RRMs should not be put in a position where they would have to pay the fees upfront**, i.e. providing a credit line for ACER while not being sure that the expected fee recovery income later in the year would fully cover the upfront payment and needing to use their own capital to cover for the intermediate period. Such a system could potentially be detrimental, especially for smaller RRM, and would certainly introduce a significant risk and competition element.

8



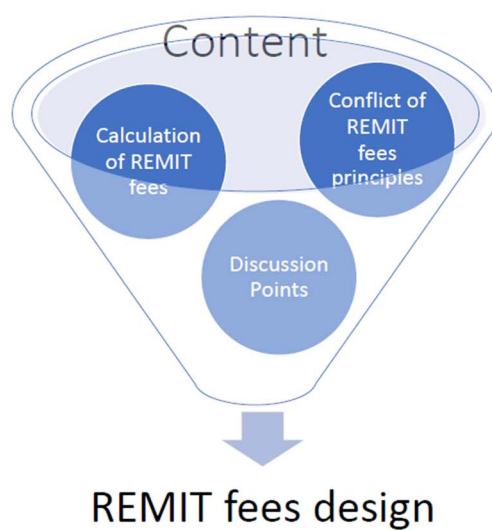
Annex III: Presentation EFET

15 July 2020

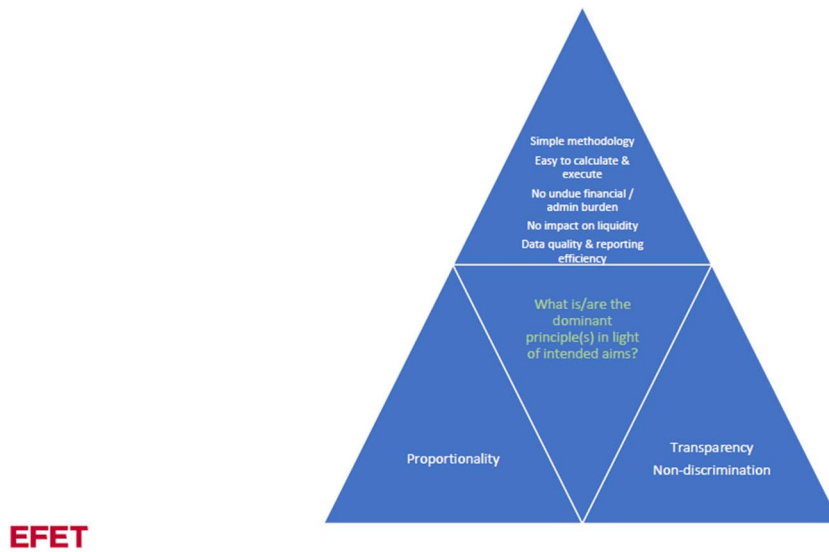
Workshop at DG Energy for consultation on planned REMIT Fees

Dr. Karl-Peter Horstmann, EFET
Dr. Erwin Krapf, EFET

EFET European Federation
of Energy Traders
SO YOU CAN RELY ON THE MARKET

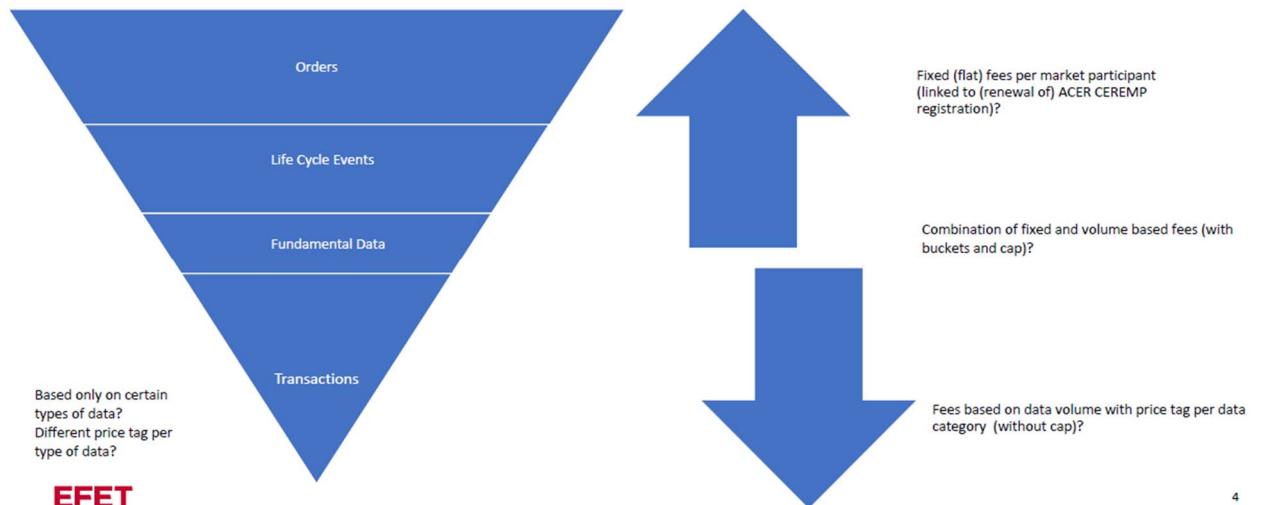


1. Conflict of different REMIT fees principles (section 4.1)



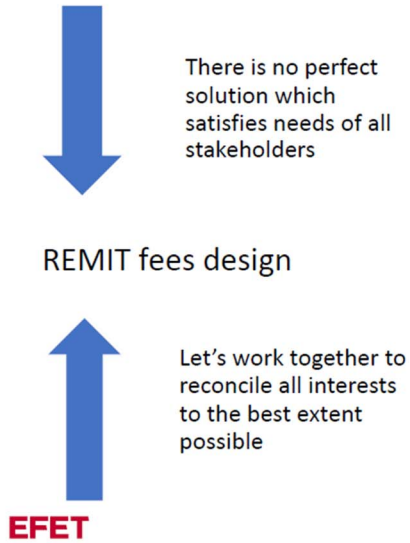
3

2. Calculation of REMIT fees (section 4.4)



4

3. Discussion points



Required under REMIT Fees Principles	Pain Points from (some) Market Participants (MPs)
Stable, ex-ante, mid-term (3 years) forward-looking and transparent budget-setting for relevant services, subject to scrutiny	Size of budget / relevant budget activities Full cost vs. partial budget recuperation (EU to pay budget partially)
Fee cap to avoid (a) undue financial burden & (b) negative impact on liquidity & (c) market entry barriers, hence, bucket fee structure with fixed amounts dependent on transaction volume preferable	Flat fee vs. (unlimited) variable fees
Transparency of fees to be paid by RRM and passed through to MPs (calculation tool) needed. Only ACER can calculate due amounts to be paid by RRM and passed-through to MPs	Treatment of emission allowances & derivatives (reported under EMIR) / Fundamental data reporting vs. transaction reporting / MPs without production facilities, i.e., which only report transactions
Correction mechanism to avoid potential over- and underbudgeting	Yearly overbudget should be bankable / Underbudget to compensate by EU
Improved service level of ACER (post trade transparency & reconciliation)	Increased service level should not lead to higher budget
Easy implementation at RRM and MP level	Collection from RRM may lead to implementation challenges for MPs, e.g., MPs reporting on behalf of its customers
Fee collection by ACER from RRM as collection from MPs is impractical and expensive	Directly levy fees from MPs
Transparent, fair and proportionate pass-through of costs by RRM to MPs	Scope of regulation should include RRM and MPs
Combination of fixed (RRM) and variable fees (MPs) Variable fees dependent on transaction volumes, subject to a cap	Different fees per types of data (standardised vs. non-standardised, transactional vs. fundamental data, transactions vs. orders)
Yearly invoicing at the beginning of a budget year	Ex-post vs. ex-ante fee recuperation / Annual fluctuations in transaction / Order volumes

secretariat@efet.org
www.efet.org

EFET European Federation
of Energy Traders
SO YOU CAN RELY ON THE MARKET



10/07/2020

TRA0767-20



ENTSG position on REMIT Fees

DG-ENER and ACER public workshop 15 July 2020

Kathrine Nygaard Stannov, Subject Manager Transparency

Online workshop

Summary of ENTSG view on PC questions



REMIT budget establishment: In addition to the normal scrutiny of ACER's budget, the addressees of the fees should be given the chance annually, via public consultation, to influence and comment the priorities, activities to be covered by the fees, and their costs. Furthermore, based on a max. fee level, announced by public consultation, should be established on a 3-5-year basis.

Fee's methodology: The fee methodology shall be based on the number of reported transactions of trade data only (incl TSOs' gas trades). Fundamental data & transportation transactions shall be exempted => ENTSGs, GIE, TSOs/LSOs/SSOs shall be excluded from the fee scheme on these transaction types .

Fee's addressees: ENTSG is not against RRM's collecting the fees as proxy between ACER and the Market Participants. ACER shall ensure a high level of transparency to facilitate the process (detailed overview of the reported data.)

Calculation and collection of fees: ENTSG suggests calculation and collection of fees based on ex-post principle. This would ensure the cost-reflectiveness of the fees, decrease entry barriers for new MPs and RRM's and reduce costs associated with debiting and bill reconciliation.



Thank you for your attention

Kathrine Nygaard Stannov, Subject Manager Transparency

transparency@entsog.eu

ENTSOG - European Network of Transmission System Operators for Gas
Avenue de Cortenbergh 100, 1000 Bruxelles

www.entsog.eu | info@entsog.eu

