

31 July 2012

**Cover Letter to the EFET Response to  
the ACER public consultation on  
“Recommendations to the Commission as regards the  
records of wholesale energy market transactions,  
including orders to trade, and as regards the  
implementing acts according to Article 8 of Regulation  
(EU) No 1227/2011”**

EFET welcomes this ACER consultation on Recommendations to the Commission regarding the reporting requirements under REMIT. It is important that the final recommendations to the European Commission facilitate the development of a robust European energy market monitoring regime. The arrangements for reporting must also:

- be proportionate and not lead to any undue burdens on market participants including avoiding any duplication of reporting
- take into account the specifics of the energy sector
- provide clarity as to the requirements market participants must meet
- be consistent with REMIT and its underlying objectives

The current ACER proposals do not provide an appropriate balance across these various elements and significant further work will be necessary over the coming months before its advice can be submitted to the European Commission. In this respect, EFET highlights the following key issues that must be taken into account in the next stage of the ACER process:

- **intragroup transactions** – EFET supports the exclusion of intra-group transactions and contracts from the standardised reporting requirements to ACER. Intra-group transactions are not executed on the market and therefore are not capable of leading to potential insider trading or market manipulation. Firms will keep records of intra-group transactions and these can be available to NRAs on request or in the event of any investigation. EFET also points out that while ESMA is reviewing whether the reporting of intra-group transactions is necessary under EMIR, it should be noted that the purpose of REMIT and EMIR are very different: EMIR seeks to put in place arrangements in order to reduce the level of credit and systemic risks in derivative markets whereas REMIT focuses on transparency and prohibition of market abuse in physical power and gas markets. As such, even if ESMA decides that intra-group transactions should be reported under EMIR there should be no presumption that similar arrangements should be put in place under REMIT as it would significantly increase the reporting burden for no additional justification.
- **exclusion of non-standardised contracts** – EFET does not support the proposal to require firms to report the full contracts for these non-standard transactions which are

generally of a long form nature. Of course, these contracts are kept on record and are available to NRAs on request and in the event of any investigation. If ACER decides that some contractual information must be reported on non-standardised transactions it is crucial that this remains limited to only basic prime economic terms that do not need to be updated.

- **trade life cycle reporting** – EFET does not support reporting the full amendments associated with a trade life cycle as this could exponentially increase the amount of data ACER and NRAs have to deal with given that changes can occur through the normal course of business before the transaction is finally settled. If ACER requires the reporting of all changes the only way to deliver this will be post settlement of the transaction. In addition, trades can be altered post financial settlement, e.g. if trades are novated to a new counterpart and ACER needs to be clear that such amendments should also not be reported.
- **establishing RRM**s – EFET recognises that entities that want to report to ACER must be fully compliant with its communication protocols and data standards. If firms that want to report only their own transactions (possibly including those of their wider Group) have to become an RRM then this should be a light touch approach focusing only on the compliance with ACER’s communication protocols and data standards. EFET recognises that additional requirements may be necessary for RRM’s that want to provide third party reporting services.
- **avoiding double reporting** – It is crucial that the proposed arrangements avoid double reporting both between the transaction reporting requirements under REMIT and EMIR and also with respect to fundamental data under the Third Energy Package and inside information under REMIT. EFET does not support direct reporting of fundamental data or inside information to ACER but recognises that ease of access to such information is important – as such it is suggested that ACER collects such information from national or regional platforms where they exist or company websites in this initial period. Establishing an EU information aggregation platform that can automatically collate data from a large number of sources would be a cost effective way of delivering the necessary centralisation that ACER desires and avoiding unnecessary double reporting on firms. EFET will provide its further thoughts on this issue in response to the short discussion paper published by ACER just before the recent REMIT workshop.

EFET also has a number of detailed comments on the proposed definitions put forward by ACER and on the suggested reporting fields.

EFET looks forward to working closely with ACER in the coming months to finalise its advice to the European Commission and in the meantime if you have any questions on this response please do not hesitate to contact Karl-Peter Horstmann (Chair of EFET Task Force Market Supervision), Cemil Altin (vice-chair of EFET Task Force Market Supervision and co-chair EFET WG on trade reporting) or Filip Sleeuwagen (co-chair EFET WG on trade reporting). Kind regards

EFET