

Enel response to

ACER 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

Contact information

Name: Giuseppe Montesano
Company: Enel spa
Address: Viale Regina Margherita 137, 00198 Rome, Italy
Email: giuseppe.montesano@enel.com
Phone: +390683052322
Country: Italy

Introduction

Enel Group appreciates ACER initiatives to collect stakeholders' views on transaction reporting under REMIT, as well as its proposals and efforts to guarantee consistency among the new set of transparency requirements that are expected to be in force under REMIT, EMIR, MiFID and FDTG.

In this regard, we expect that ACER and ESMA work in full coordination to guarantee since the beginning of the reporting obligations consistency of formats, timing and content of reporting, common ID for market participants/transactions, as well as to avoid the overlap of reporting requirements between REMIT and the relevant financial regulation.

While in general fully supporting EURELECTRIC and EFET position on this specific consultation, we would like to stress some points that we consider particularly relevant and with important possible consequences.

Products to report

Considering the effort that providing transaction information would imply for operators (particularly for some classes of data), we ask ACER to broadly reflect on the value of monitoring some requested information, and be open to exclude or limit reporting for those data and contracts which could be redundant, or unworthy to receive for the purposes of market monitoring and eventually would not be used by ACER.

Enel Group's view is that REMIT reporting should be required in standard products only and transactions concluded only. In particular:

- Non standardized contracts

First of all we are convinced that having knowledge of non-standard contracts does not provide regulators with valuable insight on market abusive practices, because they are bespoke and tailor-made contracts without impact on the market price formation. Additionally

reporting non standardized contracts can be onerous for operators, due to the necessity to directly provide information to ACER. A compromise solution could consist in reporting being limited to non standardized contracts above a threshold (set in advance at a high enough level).

- Orders to trade

Differently from non standardized contracts, orders to trade are explicitly mentioned as object of reporting in REMIT. However, collecting, organizing and transmitting this information is equally burdensome and the amount of information received by ACER and NRAs can be huge and difficult to organize, transmit and manage. Again, we ask ACER to try to identify which kind of information is worth receiving for the purposes of market monitoring.

In our opinion, ACER should introduce some precise rules for reporting orders to trade, in order to finally receive the valuable information only.

For example, threshold(s) could be introduced (in absolute or relative figures) on the number of orders in the day, the notional value of any single order, the notional value of the sum of orders in the day, or all of them, so that reporting is excluded only when one market participant falls below this threshold. Alternatively, ACER could limit reporting to orders remaining opened in each market at the end of a day.

In any case, definition of orders to trade should be revised as to more clearly define what an “order” is and to explicitly exclude bespoke orders from the range of reportable actions.

- Standardized bilateral contracts

ACER recommendations should pay due attention to bilateral transactions in standard contracts, which market participants will have to directly report, the same way as they would do with non-standard transactions, but with more demanding formats and more challenging timings. Reporting this kind of transactions may be not easy for market participants, especially if asked with the same deadline as other transactions reported through organized market places, not to mention the difficulty of reporting their corresponding orders to trade.

At our knowledge the amount of standard bilateral transactions may be large, for some market participants almost half of all contracts concluded in a year.

In consideration of these complexities, we suggest that ACER introduces some exceptions for bilateral contracts in terms of longer timings for reporting, or simply provides for a similar treatment as non standardized transactions.

- Intragroup transactions

We are strongly convinced that intragroup transactions have to be excluded from the regular/periodic reporting under REMIT.

Intragroup transactions only respond to decisions of internal organization and can hardly influence the formation of market price. In our view, provided that ACER knows which entities are members of a group, the only relevant things, as far as market impacts are concerned, are the transactions of the group with the external market. Intragroup transactions can influence the behavior of group entities in the market, but what is relevant for assessing possible market impacts is only this behavior towards the outside world. We think that reporting should be

avoided as an end in itself, and only be requested for monitoring against market abuse: hence, ACER should recommend to the Commission that intragroup transactions are excluded from reporting and that market participants only report transactions outside the Group.

Reporting can of course be done on an ad-hoc basis when regulators consider that having that information is necessary for monitoring purposes. Moreover, in order to respond to the regulators' concern that different legal entities are created by the same group, possibly escaping from appropriate supervision, we propose that registered traders are also associated to a "Group identifier". This would allow regulators to easily focus on one whole group activities in case they deem it necessary.

National specificities

In some cases, it would be necessary to take into account peculiarities of national electricity systems when providing the list of "wholesale energy products". For example, in France a very specific product is sold wholesale, introduced in 2010 by a new regulatory measure, that foresees to "allocate to any supplier a right of access to baseload electricity at a regulated tariff that reflects the economic conditions of the historic nuclear fleet in a volume proportional to the supplier's portfolio of domestic customers" – the so called ARENH product. As such, this product would be subject to REMIT reporting. However, it has no particular power to manipulate the market, due to the fact the price is regulated (by the Government till the end of 2013, and afterwards by the Regulatory Authority) and volumes allocation is subject to regulatory supervision.

In order to avoid reporting activities on regulated products we propose either to add such exception to the definition of wholesale energy products, or at least to entitle the NRA to report.

Reporting of regulated information

Enel Group appreciates ACER efforts to make reporting of inside information as homogeneous and consistent as possible throughout Europe.

We take this opportunity to reaffirm that if (as it seems) ACER final assessment is that a platform approach is favored, compliance of market participants with obligation of disclosing inside information should be guaranteed when they communicate it to the corresponding platform, so that they do not have to additionally publish on their websites, nor to follow up and constantly check if the information has actually been published by the platform.

31 July 2012