



## ACER Consultation on the publication of extracts of the European Register of Market Participants The EDF Group Response

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December 5, 2013

The EDF Group welcomes ACER's public consultation on the publication of extracts of the European register of market participants.

As a general comment, it is of utmost importance for the EDF Group that any publication by ACER of the data extracted from the European register should be subject to all the requirements listed in Article 12.2 of REMIT, including the one stating that the information should only be published *"provided it is not likely to create any distortion in competition on those energy markets"*. These publications should also be subject to the requirements of article 17 thereof.

Despite what is written in the chapter dedicated to the *"Legal framework"* of the consultation document (page 7), it is still unclear for us whether the above mentioned provisions laid down in Article 12.2 apply effectively or not to information relating to the European register of market participants, since no reference is made to Article 9.3. Indeed, Article 9.3 sets forth only one of the requirements of article 12.2 (*"provided that commercially sensitive information on individual market participants is not disclosed"*). It should be noted that the latter requirement, as a matter of consistency with article 12.2, should also be completed with the terms *"and cannot be inferred"* in the future ACER Registration Guidelines.

Similarly, the scope of article 17 should be specified as it covers *"confidential information received, exchanged or transmitted pursuant to REMIT"* without any identification whatsoever of the data that can be considered as confidential and thus benefit from the protection measures laid down in this article.

Furthermore, pursuant to article 11 *"Data protection"* of REMIT, any publication of data extracted from the European register that may contain personal items should be made in accordance with the Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and the national laws such as the French Act n°78-17 of 6 January 1978 modified on Information Technology, Data Files and Civil Liberties and its Decree n°2005-1309 of 20 October 2005 enacted for the application of Act n°78-17.



## **1) INFORMATION NECESSARY FOR MARKET PARTICIPANTS TO COMPLETE THEIR REGISTRATION OBLIGATIONS ACCORDING TO ARTICLE 9(1) OF REMIT**

*a) Is the scope of data foreseen to be published sufficient for market participants to complete their registration, especially with regard to the information required in Section 4 of the registration format, and thus fulfill their obligation under Article 9(1) of REMIT?*

The scope of data to be published from the European Register should be sufficient for the time being for the purpose of allowing a proper registration of the market participants.

We understand that

- (i) each Group companies entering into transactions that could qualify as a market participant as regards REMIT should register with its national regulatory authority, and
- (ii) the prohibitions and obligations provided for in REMIT apply to any market participant regardless of its corporate structure.

However, we noticed that ACER is requesting some information about related undertaking of market participants under Section 4 of the registration format. We therefore understand that each Group company remains, in any case, entirely responsible for its own registration.

This is of paramount importance since no control by the Market Participant to which another Market Participant declares to be affiliated to is currently foreseen. As a consequence, it should be clearly stated in the ACER Registration Guidelines that a Market Participant should not be held liable in the event of inaccuracy of the information submitted by another Market Participant, in particular when the latter wrongly declares to be a related undertaking of the former. Market participants should not be held liable also in case of failure to register of one of their related undertakings, since this would make it impossible for them to provide all the information items required in Section 4 (e.g. the ACER Code) of the ACER registration format.

We, finally, wish to highlight that the same need to postpone the registration phase for Section n° 4 after the partial publication of the ACER Register may be extended to Section 5 (especially field n. 502) where Market Participants are required to communicate the ACER Code of the delegated third party responsible to report transactions on their behalf. It seems that this piece of information can be available only after the publication of the ACER Code of the RRM.



*b) In order to identify or verify the identity of a related undertaking, is the publication of information in fields 108 to 110 (address, city, postal code) necessary and appropriate?*

The scope of data to be published from the European Register should be sufficient for the time being for the purpose of allowing a proper registration of the market participants.

*c) Is the publication of other company's identifier such as VAT Number in field 112 or the codes in fields 113 to 116 (EIC, BIC, LEI, GS1) or 118 (trade register) necessary and appropriate (please take into consideration that they might not be available for all market participants)?*

The EDF Group considers that the publication of - at least - the VAT number and may-be the LEI would be appropriate. This could be particularly useful when entering into transactions with companies belonging to a Group, where several entities of the Group could have very close company names or even the same address. Both these identifiers usually exist in market participants IT systems.

However, regarding the other codes such as EIC, BIC, etc., we do not really see the need as firms would have more than one EIC and BIC and these would not necessarily be the codes used in all the transactions they do.

*d) Do you believe that the scope of data to be published from the European Register should be increased or decreased?*

The scope of data to be published from the European Register should be sufficient for the time being for the purpose of allowing a proper registration of the market participants.

Furthermore, the EDF Group is firmly opposed to the publication of any kind of privacy data (e.g. Fields 204/205 (name), 206 (address)...) in Section 2 of the registration format since they are not relevant for the completion of market participants' registration.

## **2) INFORMATION TO IMPROVE THE TRANSPARENCY OF WHOLESALE ENERGY MARKETS**

*a) Is the scope of data foreseen to be published for transparency purpose appropriate?*

It appears appropriate, especially with regard to the identification of the place of publication of inside information, as it may reinforce the effectiveness of disclosure thereof. As regards this issue, ACER should also consider that, even, if not specified in the registration format, market participants may identify more than one place of publication of inside information, for instance when two distinct publication platforms are available for electricity and natural gas.



*b) Do you believe that the scope of data to be published from the European Register for transparency purpose should be increased or decreased?*

The scope of data to be published from the European Register for transparency purpose appears to be sufficient as it is.

Furthermore, EDF is firmly opposed to the publication of the information required in Section 2 of the registration format as such data, while being private, is not relevant for transparency purposes.

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