

ACER-IN-2015-1323

ACER Public Consultation on a common schema for disclosure of inside information under REMIT

A EURELECTRIC Response Paper

June 2015

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets** as the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment** to ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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KEY MESSAGES

- EURELECTRIC – the sector association representing the electricity industry at European level – welcomes the opportunity to provide its views on ACER’s proposal for a common schema for disclosure of inside information under REMIT.
- Regarding ACER’s proposal for a common schema for disclosure of inside information under REMIT, we believe that no additional field should be added to the current proposal, but that several other fields should be removed or amended.
- Some of the fields or values in the proposal bring indeed no additional valuable information to the market, to the extent that they are redundant with other data fields. The inclusion of each field should always serve the underlying purpose of REMIT - i.e. bring value added to the market in terms of transparency - and the implementation costs should be proportionate to the regulatory benefits. In any case, there must be a sufficient implementation period granted, if any changes are proposed by ACER.
- Generally, we do not see the obligation to report on field (20) “Impact on emission allowances prices” in a REMIT context. At the same time, we appreciate ACER’s intention to create synergies in the disclosure process under REMIT and MAR. Thus, to the extent that ESMA would not deem the current REMIT publication sufficient for the purposes of the MAR concerning emission allowances and for the purpose of avoiding double reporting, we would support retaining the proposed field, but only if it remains optional.

EURELECTRIC – the sector association representing the electricity industry at European level – welcomes the opportunity to provide its views on ACER’s proposal for a common schema for disclosure of inside information under REMIT. We have listed some comments below. In general, we believe that no additional field should be added to the current proposal, but that several other fields should be removed or amended.

As a long-term objective, we are supportive of the establishment of a common EU platform for the publication of inside information. Such a platform should be the place where transparency data are gathered and disclosed; this would certainly bring greater transparency in a cost-effective manner. It is crucial to ensure that the common platform is sufficiently robust and that it meets the required operational standards, especially in terms of timelines and back-up solutions. A pragmatic approach could be that a service provider may create a common platform linking the existing regional platforms. In our view, EMFIP could play such a role. Insofar, regional platforms (e.g. EEX transparency platform, Nordpool) which have established well-functioning reporting processes and are recognised by national regulatory authorities could remain in place. As per ACER’s recommendation in the Third Guidance, firm’s websites should remain functioning as a fall-back option even if a common EU platform is established.

1. Would you add any other field not included in the current proposal? If so, please explain your reasoning.

EURELECTRIC believes that no additional field should be added to the current proposal.

2. Would you remove any field represented in the current proposal? If so, please explain your reasoning.

We indeed believe that some data fields should be removed, which we further detail below under section 3, for the following reasons

- Some of the fields or values in the proposal bring no additional valuable information to the market, to the extent that they are redundant with other data fields. It is key in our view to avoid duplicative data fields, which are not useful and possibly confusing to the market. We welcome any initiative to enhance consistent and harmonized publication of inside information under REMIT, but would also like to stress that any proposal or final decision in this field should serve the underlying purpose of bringing value-added to the market in terms of transparency, and the implementation costs should be proportionate to the regulatory benefits.
- Certain fields or values in the proposal are in our view not in line with REMIT disclosure requirements and are likely to raise implementation issues. We believe it is crucial to have clear rules and responsibilities for disclosure requirements and not to mix compliance control with disclosure of information to the market.

3. Would you change any of the descriptions, accepted values or applicability? If so, please explain your reasoning. Are the schemas or values that you are suggesting based on any industry standard? Which one(s)?

EURELECTRIC believes that the following fields should be removed/modified from the current proposal:

- **Field (3) “Event status” – Value “Withdrawn”:**
 - Event status "Closed": Would/should the status then automatically change to "Closed" when the Event stop time is passed? To have to manually update Event status upon completion of the event cannot be reasonable and would bring a huge additional burden on market participants.
 - We don't necessarily see the need for both "Cancelled" and "Withdrawn" event status. The information needs to be simplified. The value “cancelled” is enough.

- **Field (4b) “ message type” (gas capacity)**

We believe that the value “import contract curtailment” in the list is not in line with REMIT requirements for the disclosure of inside information and is likely to raise considerable implementation issues:

- First, it does not relate to information about the capacity and use of assets or facilities as provided under REMIT but to bilateral contracts with confidential content;
 - Furthermore, there is room for interpretation about what may constitute an “import” and what may constitute a “curtailment”, and it is unclear which party to an import contract should disclose a possible curtailment, considering, that, as stressed in ACER third guidance, a market participant should not disclose inside information on behalf of a third party;
 - In addition, in case of a curtailment, the party suffering the curtailment may be informed ex-post of the event and the volumes affected by curtailment, as well as its duration, may be hardly predictable, so that the potential effect on the energy wholesale market cannot be assessed and the information to be disclosed may be misleading or confusing;
 - The disclosure of the curtailment by the suffering party may raise legal consequences related to confidentiality undertakings;
 - In this respect, TSOs may be best placed to fulfill the disclosure obligation for information related to the use of the transportation facilities, which would reflect possible curtailments through the nomination programs. We understand that ACER supports this view for SSOs and LSOs for storage and LNG facilities. For the same reasons, this should be pertinent for TSOs, considering that they would be in a position to aggregate the data and disclose the flow impact for the different entry points, which is the most relevant for the market.
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- **Field (7) “Affected Point EIC code”:**

We believe this information would be redundant with field (6) “Affected Asset” which would reflect the official name of the affected asset. We therefore recommend its removal.

- **Field (8) “Fuel type”:**

We are not sure what value the very broad classification of fuel types could add to the market, i.e. why ACER lists several energy sources like nuclear, wind etc. and not just power and gas. There may be some good explanation for this, but in that case we would like some clarification on the motivation of this point.

- **Field (9) “Bidding/Balancing zone”:**

We believe this information is redundant with the identification of the country where the asset is located, considering that it is exceptional that the bidding or balancing zone does not correspond to a country. This data has therefore limited value added.

- **Fields “unavailable capacity” (10a), “available capacity” (11a) or “nominal capacity” (12a):**

- One of these three fields could be removed: unavailable capacity, available capacity or nominal capacity. Our suggestion is based on the fact that the three of them can be calculated by an arithmetical calculation starting from the other two fields. $\text{Nominal capacity} = \text{unavailable capacity} + \text{available capacity}$;
- Another suggestion could be the following - Field (10a): Article 2(1)(b) of REMIT refers to the "capacity and use of facilities", so ACER should keep the field referring to the available capacity (11a) and remove the field related to unavailable capacity (10a). This is also in line with Transparency Regulation which refers to “available capacity during the event” (art 15.1.a).
- Field (12a): In case the Nominal Capacity (12a) field is retained, it should be replaced by « installed generation capacity » which is the term used by the Transparency Regulation. Definition of such capacity should also be aligned.

- **Field (13) “Published” & (14) “Decision Time”:**

- We believe that it makes no sense to separate section 13 and 14. We would indeed remove the field “decision time” (14) since field “published” (13) already allows the public and ACER to know when the message has been publicly disclosed.
- More specifically about field (14), we can outline that Article 4 of REMIT explicitly requires the effective and timely public disclosure of inside information. Current guidance from ACER mentions that REMIT market participants should be aiming for real time or close to real time disclosure of inside information, but at the latest within one hour. Compliance regarding the timely manner of the publication should not be made by means of automatic comparisons based on a case by case analysis. Also from a practical point of view, the information is not relevant for unplanned unavailability. For planned unavailability, the decision process is often complex, stretched out in time and does not always eventually rest with a management board which can be precisely identified in time; and such decision processes are market participant specific and not harmonized. The decision could even be taken by an external body (such as a regulator). Furthermore it is important to point out that processes to publish insider information are very often highly automated - including such a field would thus add further complexity and potential delays to the process as additional manual processes would be required.

- **Fields (15) and (16) “other type messages”:**

It should be free text and optional so that we can be flexible with the time statements (for example expected first power on X Wind farm in second half of 201X). In particular for the “event stop” field (16), the event might of permanent nature (e.g. mothballing or dismantling of capacity) so it should be an optional field. Generally it should be possible in these two sections to indicate if the time specified is a fixed time or just an estimated time to give an indication of to what extent updates can be expected. Although it may result in some legal uncertainty it should be possible to indicate if the time specification is based on an estimate in situations where there is considerable uncertainty.

- **Field (18) “ACER registration code”:**

We believe that the clear identification of the company/group that is disclosing the information and of the asset concerned by the event are sufficient for the purpose of disclosure of inside information. This field is redundant with other existing fields.

- **Field (19) “Market participant”:**

We believe that the clear identification of the company/group that is disclosing the information and of the asset concerned by the event are sufficient for the purpose of disclosure of inside information. This field is redundant with other existing fields.

- **Field (20) “Impact on emission allowance prices”:**

Generally, we do not see the need to report on field (20) in a REMIT context. Requiring that the operator must assess whether the event has influence on CO₂ emission prices is not in line with the other requirements in the regulation.

Furthermore, the way of calculating this impact is very subjective. This is almost impossible for an operator to know the impact of its replacement capacity on CO₂ price. There is little to no market participant specific information which is or could be relevant for emission allowances price formation as these prices are indeed mainly influenced by macroeconomic variables and Member States and EU’s political decisions. Hence, one may expect this field to remain blank most of the time.

At the same time we appreciate ACER’s intention to create synergies in the disclosure process under REMIT and MAR. However, before a decision outside of the Regulation 1227/2011 can be made, a clear coordination and a legally binding agreement with ESMA need to be ensured. If such an agreement exists, this field should not be part of the UMMS. However, to the extent that ESMA would not deem the current REMIT publication sufficient for the purposes of the MAR concerning emission allowances and for the purpose of avoiding double reporting, we would support retaining the proposed field, but only if it remains optional. If this solution is adopted, the field should also be renamed into “Potential impact on carbon price”.

4. Do you agree with the use of RSS or ATOM feeds to fulfil the requirement under Article 10(1) of the REMIT Implementing Regulation?

Yes, we agree.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



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