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**RECOMMENDATION OF THE AGENCY FOR THE COOPERATION OF ENERGY
REGULATORS No 06/2013**

of 26 March 2013

**ON THE RECORDS OF TRANSACTIONS, INCLUDING ORDERS TO
TRADE, ACCORDING TO ARTICLE 8 OF
REGULATION (EU) NO 1227/2011
CONCERNING BALANCING AND TRANSPORTATION CONTRACTS**

THE AGENCY FOR THE COOPERATION OF ENERGY REGULATORS,

HAVING REGARD to Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency¹, and, in particular, Articles 7(1), (3), second subparagraph, and 16(6) thereof,

WHEREAS:

- 1) The Agency shall monitor trading activity in wholesale energy products to detect and prevent trading based on inside information and market manipulation.
- 2) The Agency shall collect the data for assessing and monitoring wholesale energy markets as provided for in Article 8 of Regulation (EU) No 1227/2011.
- 3) The Agency may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively and efficiently monitor wholesale energy markets.
- 4) Before making such recommendations, the Agency shall consult with interested parties, in particular with national regulatory authorities, competent financial authorities in the Member States, national competition authorities and ESMA.
- 5) A public consultation on the Agency's draft recommendations was conducted by the Agency from 21 June to 6 August 2012.
- 6) A 1st set of recommendations was already provided to the Commission on 23 October 2012 in which the Agency announced to further consult relevant stakeholders to provide any further input on records of transactions for balancing market contracts and transportation contracts².

¹ OJ L 326, 8.12.2011, p. 1.

² ACER Recommendation No 3/2012 of 23 October 2012 on the Records of Transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011.

- 7) Further consultations of relevant stakeholders were conducted by the Agency following the provision of the 1st set of recommendations to the Commission leading to this 2nd set of recommendations concerning balancing and transportation contracts,

HEREBY RECOMMENDS:


The implementing acts referred to in paragraphs 2 and 6 of Article 8 of Regulation (EU) No 1227/2011 should reflect the Agency's recommendations on the records of transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011, concerning balancing and transportation contracts which are attached to this Recommendation.

This Recommendation is addressed to the European Commission.

The Agency's recommendations on the records of transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011 concerning balancing and transportation contracts will be made available to the European Parliament, the Council and the Commission and to the public according to Article 7(3), third subparagraph, of Regulation (EU) No 1227/2011.

Done at Ljubljana on 26 March 2013.

For the Agency:


Alberto Pototschnig
Director

Recommendations
to the Commission
as regards the records of wholesale energy market
transactions, including orders to trade,
according to
Article 8 of Regulation (EU) No 1227/2011
concerning balancing market and transportation contracts

26 March 2013

According to Article 7(3) of Regulation (EU) No 1227/2011 on wholesale Energy Market Integrity and Transparency (“REMIT”), the Agency for the Cooperation of Energy Regulators (the “Agency” or “ACER”) may make recommendations to the Commission as to the records of transactions, including orders to trade, which it considers are necessary to effectively monitor wholesale energy markets.

The Agency has consulted with interested parties, including with National Regulatory Authorities (“NRAs”), competent financial supervisory authorities in the Member States, national competition authorities and ESMA and provided its Recommendations to the Commission on 23 October 2012. However, when providing its Recommendations, the Agency announced its intention to look in more detail into balancing market and transportation contracts.

This document contains the Recommendations to the Commission as regards the REMIT records of wholesale energy market transactions, including orders to trade, on balancing markets and in transportation contracts, which it considers necessary to effectively monitor wholesale energy markets and as regards the REMIT implementing acts according to Article 8 of REMIT.

Related Documents

- ACER Work Programme 2013,
http://www.acer.europa.eu/portal/page/portal/ACER_HOME/The_Agency/Work_programme/ACERWP%202012FINAL.pdf
- ACER Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, according to Article 8 of Regulation (EU) No 1227/2011, 23 October 2012,
<http://www.acer.europa.eu/remit/Documents/Recommendations%20on%20REMIT%20Records%20of%20transactions.pdf>
- ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 2nd edition 2012,
http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf
- ACER Guidance on the application of the definitions set out in Article 2 of Regulation (EU) No 1227/2011 of the European Parliament and of the Council of 25 October 2011 on wholesale energy market integrity and transparency, 1st edition 2011,
http://www.acer.europa.eu/remit/Documents/1st_edition_ACER_guidance.pdf
- REGULATION (EU) No 1227/2011 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL on wholesale energy market integrity and transparency,
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:en:PDF>
- REGULATION (EC) No 713/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 establishing an Agency for the Cooperation of Energy Regulators

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0001:0014:EN:PDF>

- REGULATION (EC) No 714/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the network for cross-border exchanges in electricity and repealing Regulation (EC) No 1228/2003, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0015:0035:EN:PDF>
- REGULATION (EC) No 715/2009 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 13 July 2009 on conditions for access to the natural gas transmission networks and repealing Regulation (EC) No 1775/2005, <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:211:0036:0054:EN:PDF>

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1 Introduction

Background

On 23 October 2012, the Agency provided the Commission with its Recommendations on the Records of Transactions, including orders to trade, which it considers necessary to effectively monitor wholesale energy markets and as regards the REMIT implementing acts according to Article 8 of REMIT.

The Agency considers these recommendations as a sound basis for the development of the REMIT records of transactions and implementing acts. The recommendations were consulted with relevant stakeholders, including ESMA, national financial market authorities and competition authorities. Responses received were taken into account as much as possible.

In its recommendations of 23 October 2012, the Agency indicated its intention also to develop recommendations on the REMIT records of transactions and implementing acts for balancing market contracts and transportation contracts and to consult relevant stakeholders ahead of their adoption.

In the meantime, the Agency has consulted with ENTSO-E and ENTSOG on the records of transactions for balancing market contracts and transportation contracts. Their views, as well as stakeholder views expressed during the public consultation of the draft recommendations, were taken into account as much as possible.

Objective of these recommendations

These recommendations complement the Agency's recommendations from 23 October 2012 as regards balancing market contracts and transportation contracts.

The purpose of the recommendations presented in this document is to assist the Commission in drafting the REMIT implementing acts according to Article 8 of the Regulation.

2 Recommendations on Records of Transactions for balancing market contracts

Background

Contracts in balancing markets are covered by the definition of wholesale energy products according to Article 2(4) of REMIT and balancing markets are covered by the definition of wholesale energy markets according to Article 2(6) of REMIT. Therefore trading in balancing market contracts falls within the scope of REMIT.

According to Article 8(1) of REMIT, market participants, or a third party on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade, on the basis of the Commission's implementing acts. In its recommendations from 23 October 2012, the Agency considered that for records of transactions in balancing market contracts, Annexes II.1, II.2 and II.3 could be taken as a reference, but indicated its intention to consult on that issue separately with TSOs or persons organising these markets on behalf of TSOs before recommending records of transactions for the reporting of such information. The Agency furthermore recommended that the implementing acts should stipulate a phased approach by delaying the reporting of records of transactions in balancing market contracts by 6 months.

Responses on the Consultation Paper

The Agency has in the meantime, in addition to its public consultation, consulted bilaterally with relevant stakeholders.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation on records of transactions in balancing market contracts: The Agency recommends that the data collection of records of transactions in balancing market contracts is postponed until the relevant network codes apply. Separate implementing acts for records of transactions in balancing market contracts should take into account these network codes. Balancing market contracts should therefore currently not be included in the list of contracts to be reported. The Agency considers that such separate implementing acts for balancing market contracts should apply after the expiration of a relevant transitory period of 12-24 months following the day of entry into force of the Network Codes on Electricity Balancing and on Gas Balancing

Until the entry into application of such separate implementing acts, national regulatory authorities should collect information and monitor balancing markets on the basis of their competences under the 3rd energy package on a regular basis, particularly pursuant to Articles 35 et seq. of the Electricity Directive and Articles 39 et seq. of the Gas Directive. They shall regularly inform the Agency about the balancing market developments and the outcome of their monitoring activities in the context of the cooperation with the Agency, according to Article 16(1), subparagraph 3, of REMIT, in order to enable the Agency to carry out its monitoring of wholesale energy markets according to Article 7(1) of REMIT effectively and efficiently, in particular as regards potential cross-market abuse cases.

Explanatory text

Balancing markets, as defined in the relevant Framework Guidelines, namely the Framework Guidelines on Gas Balancing in Transmission Systems (FGB-2011-G-002) from 18 October 2011 and the Framework Guidelines on Electricity Balancing (FG-2012-E-009) from 18 September 2012, are currently still very different across Europe. There are currently no European standardised products. This would make the pan-European monitoring of balancing markets very difficult. Therefore, for the sake of efficiency, it is recommended to await the relevant balancing network codes which foresee harmonisation of products on the balancing markets. The relevant Framework Guidelines stipulate that the network codes on balancing shall take precedence over relevant national frameworks (legislation, regulation, codes, standards, etc.) for cross-border and market integration issues and national frameworks shall be adapted to the extent necessary to ensure proper implementation at the national level.

3 Recommendations on Records of Transactions for transportation contracts

Background

Article 2(4)(c) and (d) of REMIT specifically defines contracts relating to the transportation of electricity or natural gas in the Union and derivatives relating to the transportation of electricity or natural gas in the Union as wholesale energy products. Therefore, the trading of these contracts falls within the scope of REMIT.

According to Article 8(1) of REMIT, market participants, or a third party on their behalf, shall provide the Agency with a record of wholesale energy market transactions, including orders to trade, on the basis of the Commission's implementing acts. In its recommendations from 23 October 2012, the Agency understood transportation contracts according to Article 2(4) of REMIT as capacity contracts for the transportation of natural gas or electricity in the Union. The Agency considered that for records of transactions in transportation contracts, Annexes II.1, II.2 and II.3 could be taken as a reference, but indicated its intention to consult on that issue separately with TSOs or persons organising these markets on behalf of TSOs before recommending records of transactions for the reporting of such information. The Agency furthermore recommended that the implementing acts should stipulate a phased approach by delaying the reporting of records of transactions in transportation contracts by 6 months.

Responses on the Consultation paper

The Agency has in the meantime, in addition to its public consultation, consulted bilaterally with relevant stakeholders.

Recommendations

On the basis of the Agency's own views and taking into account the responses received, the Agency recommends the following:

Recommendation on records of transactions in transportation capacity contracts: The Agency maintains its position expressed in its recommendations from 23 October 2012. The implementing acts should stipulate a phased approach for transportation capacity contracts by delaying the reporting of records of transactions in transportation capacity contracts by 6 months, unless energy commodity and transportation capacity are in fact obtained in one single transaction. The Agency believes that the reporting content of market transactions of transportation capacity contracts, including market coupling contracts listed by power exchanges which make the available transmission capacity between two market areas tradeable in the form of Physical Transmission Rights ("PTR"), should be made according to the Agency's recommendations from 23 October 2012, on the basis of Annexes II.1, II.2 and II.3 of these recommendations with additional fields reflecting the specificities of transportation capacity contracts on which the Agency has consulted during its public consultation. The reporting content of primary market transactions by TSOs, or third parties acting on their behalf, also on behalf of the other market participants, could, however, be limited to the reporting of disaggregated transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including relevant guidelines and network codes.

As expressed in the recommendations from 23 October 2012, the records of transactions should include lifecycle information on the pre- and post-trade stages of a transaction, including information on the physical settlement of the contract. This also applies to transportation capacity contracts. In particular, for the purpose of monitoring the impact of market coupling for day-ahead and intraday markets, the Agency considers it necessary to collect information on Net

Transfer Capacity (NTC), Available Transfer Capacity (ATC), and, following the switch to flow-based market coupling, Available Cross Zonal Capacity for day-ahead or intraday markets, as well as information on the nominations of market coupling contracts by central counterparties to TSOs on the corresponding borders of the contracts. The implementing acts should enable the Agency to collect such information according to Article 8 of REMIT.

Explanatory text

The bilateral consultations did not indicate any reason why the Agency should modify its position expressed in its recommendations from 23 October 2012. The Agency therefore maintains its position expressed therein.

The additional fields to be added in Annexes II.1, II.2 and II.3 of the recommendations from 23 October 2012 as a new section “Additional data for transportation capacity contracts” before the section “Lifecycle information” are the following (numbering to be adjusted accordingly):

	Additional information for capacity contracts for the transportation of electricity or natural gas	
1.	Transportation type	Identifies the transportation type of the contract.
2.	Originating Market	Identifies the originating market area concerned.
3.	Destination Market	Identifies the market area where the delivery will take place.
4.	Intrasystem(s)	Where applicable the system(s) used to transport between the seller’s and buyer’s system.
5.	Interconnection Point(s)	Where applicable identification of the border(s), border point(s) or entry/exit point(s) of a transportation contract.

4 Conclusions and taking the way forward

This document contains the Agency's Recommendations on the Records of transactions on balancing market contracts and transportation contracts under REMIT which it considers are necessary effectively and efficiently to monitor wholesale energy markets under the Regulation.

The Agency considers these recommendations as complementing its recommendations from 23 October 2012 and a sound basis for the development of the REMIT records of transactions and implementing acts.

The Agency is available to support the Commission services and to provide additional recommendations in the course of the further development of the REMIT implementing acts and will continue the involvement of stakeholders on issues related to the implementation of REMIT.



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