

## BACKGROUND DOCUMENTS

### of the 64th ACER Administrative Board Meeting

23 – 24 October 2024

	Agenda point	Direct link
126 BoR meeting - minutes	3	<a href="#">Link</a>
Fees paid to the Agency for the Cooperation of Energy Regulators (ACER) – update; <i>see among the documents below also the European Commission consultation paper</i>	5	<a href="#">Link</a>
AB decision 06/2024 on amending the indicative procurement plan for the year 2024	8	<a href="#">Link</a>

*Below are the documents that are not available for download from ACER's website:*

**64th MEETING**  
**THE ADMINISTRATIVE BOARD**  
**24 October 2024**

**Subject:**

*Draft Single Programming Document for the years 2025-2027*

**Background:**

In line with Article 32 of ACER Financial Regulation<sup>1</sup> and the requirements of the Framework Financial Regulation applicable to decentralised agencies<sup>2</sup>, as well as the Agency's Founding Regulation<sup>3</sup>, each year, the Director shall prepare a draft programming document<sup>4</sup> containing annual and multi-annual programming and shall submit the draft programming document to the Administrative Board and to the Board of Regulators.

The Administrative Board shall adopt the draft Programming Document of the Agency after receipt of a favourable opinion of the Board of Regulators and submit it to the European Parliament Council and to the Commission no later than 31 January.

Following the Commission's Opinion on the draft, the Board of Regulators is called to give its favourable opinion to the document and the Administrative Board to adopt it by the end of 2024, following the adoption of the EU budget by the Budgetary Authority. At the December 2021 meeting, the Administrative Board requested to receive the programming document (SPD) for endorsement before it is submitted to the BoR for its opinion.

On 3 October 2024, the Agency received the draft Commission's Opinion on the draft Programming Document following the Inter-service consultation. The Agency has addressed comments contained in the Opinion, with the aim of informing the Administrative Board on developments concerning the SPD and thus facilitating the adoption process in December, following the adoption of the EU budget.

The regulation foresees that "If the Union body does not fully take into account the Commission's Opinion, it shall provide the Commission with adequate explanations." The Agency has therefore

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<sup>1</sup> Decision No. 8/2019 of the Administrative Board of the Agency for the Cooperation of Energy Regulators of 21 June 2019 on the Financial Regulation of the Agency for the Cooperation of Energy Regulators.

<sup>2</sup> Commission Delegated Regulation (EU) 2019/715 of 18 December 2018 on the framework financial regulation for the bodies set up under the TFEU and Euratom Treaty and referred to in Article 70 of Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council (C/2018/8599), Article 32 and Article 33.

<sup>3</sup> Regulation (EC) No 713/2009 of the European parliament and of the Council of 13 July 2009 established the Agency for the Cooperation of Energy Regulators repealed by Regulation (EU) 2019/942 (recast), Articles 20(1) and 33(1), (2) and (3).

<sup>4</sup> This Cover note uses the terms "Programming Document" and "Single Programming Document" (the terms are interchangeable). The former is in line with Article 20 of the ACER Regulation and the latter with the Financial Regulation of the Agency for the Cooperation of Energy Regulators of 21 June 2019 (Decision No 8/2019 of the Administrative Board) and in the Communication from the Commission on the strengthening of the governance of Union Bodies under Article 70 of the Financial Regulation 2018/1046 and on the guidelines for the Single Programming Document and the Consolidated Annual Activity Report from 20.4.2020 (C(2020)2297 final).

analysed the Commission's Opinion and provided a note addressing the parts of the Opinion in which the Agency is invited to make amendments to the SPD or to provide clarifications.

The amendments, including updates and corrections to the version submitted in January, will be included in track changes in the SPD itself, and provided in a separate attachment for the December AB meeting.

**Action required:**

*The Administrative Board is invited to take note of the Agency's comments on the Commission's draft Opinion on the draft PD 2025-2027.*

**Cover note**  
**64th ACER Administrative Board meeting**  
**23-24 October 2024**

**Subject: Amendment to Annex XIII: Indicative Procurement Plan for operational tasks of the Single programming document 2024-2026 of December 2023**

**Background:**

With the adoption of the Single Programming Document 2024-2026 in December 2023, the Indicative Procurement Plan for operational tasks for the financial year 2024 was established.

The value of estimated commitments for planned procurement procedures resulting in concluded contracts for the financial year 2024 amounted to €11,424,000.

In view of the reform of the Electricity Market Design<sup>5</sup>, which provides additional financial resources for the Agency of €1,300,000 to be allocated for additional operational tasks, it is appropriate to amend the Indicative Procurement Plan for operational tasks.

In addition, against the background of this year's budget challenges (e.g. REMIT fee gap; legal expenses etc.), the Agency undertook a major mid-term budget review in summer 2024 which led to modifications and re-prioritisations where a number of procedures were specified or removed.

**Action required:**

*The Administrative Board is invited to adopt the revised 2024 Indicative Procurement Plan for operational tasks.*

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<sup>5</sup> The new Electricity Market Design rules consist of the [amending Directive EU/2024/1711](#) and the [amending Regulation EU/2024/1747](#). They were adopted on 21 May 2024 and entered into force on 16 July 2024.



## **Consultation paper on the planned**

### **Commission Decision amending Commission Decision (EU) 2020/2152 on fees due to the European Union Agency for the Cooperation of Energy Regulators for tasks under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency**

#### **I. Background**

##### **1. Introduction**

This public consultation is part of the preparations for a Commission Decision amending Commission Decision (EU) 2020/2152 of 17 December 2020 on fees due to the European Union Agency for the Cooperation of Energy Regulators for tasks under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (“[REMIT](#)”).

Objective of the planned new Commission Decision is to update Commission Decision (EU) 2020/2152 setting the fees due to ACER for collecting, handling, processing and analysing of information reported under Regulation (EU) No 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency (“[Fee Decision](#)”). This update is necessary since [Regulation \(EU\) 2024/1106](#) of 11 April 2024 not only amends REMIT, but also the provisions on fees in Article 32 of Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (“[ACER Regulation](#)”).

This public consultation is required under Article 32(2) of the ACER Regulation. The ideas presented in this consultation paper have been developed by DG Energy and ACER for the purpose of this public consultation. They are without prejudice to the decision of the Commission college on the planned Commission Decision.

##### **2. Legislative background**

Regulation (EU) 2019/942 of the European Parliament and of the Council of 5 June 2019 establishing a European Union Agency for the Cooperation of Energy Regulators (“ACER Regulation”) introduced fees as an additional source of funding to cover the costs of REMIT related activities (“REMIT fees”) performed by the European Union Agency for the Cooperation of Energy Regulators (“ACER”). Pursuant to Article 32(2), those fees and the way in which they are to be paid, shall be set by the Commission. The Fee Decision complements Article 32 of the ACER Regulation.

Regulation (EU) 2024/1106 of 11 April 2024 amends Article 32 of the ACER Regulation (Regulation (EU) 2019/942) as follows:

### *Article 32*

#### **Fees**

1. Fees shall be due to ACER for ~~the following:~~
  - ~~(a) requesting an exemption decision pursuant to Article 10 of this Regulation and for decisions on cross-border cost allocation provided by ACER pursuant to Article 12 of Regulation (EU) No 347/2013;~~
  - (b) collecting, handling, processing and analysing of information reported by market participants, or by persons or entities reporting on their behalf, pursuant to Article 8 of Regulation (EU) No 1227/2011 and for disclosing inside information pursuant to Articles 4 and 4a of that Regulation. The fees shall be paid by registered reporting mechanisms and inside information platforms. Revenues from those fees may also cover the costs of ACER for exercising the supervision and investigatory powers pursuant to Articles 13 to 13c and Article 16 of Regulation (EU) No 1227/2011.**
2. The fees referred to in paragraph 1, and the way in which they are to be paid, shall be set by the Commission after carrying out a public consultation and after consulting the Administrative Board and the Board of Regulators. The fees shall be proportionate to the costs of the relevant services as provided in a cost-effective way and shall be sufficient to cover those costs. Those fees shall be set at such a level as to ensure that they are non-discriminatory and that they avoid placing an undue financial or administrative burden on market participants or entities acting on their behalf.

The Commission shall regularly examine the level of those fees on the basis of an evaluation and, if necessary, shall adapt the level of those fees and the way in which they are to be paid.

The Fee Decision therefore needs to be updated to reflect those changes to Article 32 of the ACER Regulation, concretely:

1. extending the fee-paying requirement to Inside Information Platforms (IIPs) and
2. extending the scope of eligible costs possibly paid from fee revenues to the new supervision and investigatory powers given to ACER by the amendment to REMIT (e.g., investigatory powers such as on-site inspections, requests for information and power to take statements in cross-border cases).

Furthermore, the Fee Decision has so far not been updated and adjusted to inflation and to changes in the market (e.g. more high frequency trading). The amendment also provides an opportunity to adjust the Fee Decision, if necessary, based on experience with its implementation since 2021.

### 3. The basic structure of the fee scheme pursuant to the current [Fee Decision](#)

1. The total costs to be covered by fees are identified in the programming document adopted by ACER's Administrative Board at the end of each year.
2. At the beginning of the year, ACER calculates the fees to be paid by each Registered Reporting Mechanism (RRM) based on data from the previous year. The fees consist of three components:
  - i) A flat enrolment fee component;
  - ii) A transaction records-based fee component, depending on the number of market participants reporting via the RRM and on how many records they generate at different organised market places or outside organised market places;
  - iii) An amount to balance differences between the transaction records-based fee component paid in the previous year and the transaction records-based fee component that would have been paid according to the actual reporting in that year.
3. Should the total amount of fees to be paid by all RRMs exceed the total eligible costs, the individual amounts payable by each RRM are reduced pro-rata.
4. ACER sends out invoices (debit notes) to reporting parties.
5. The same cycle is repeated each year.

## **II. Outline of potential amendments to the Fee Decision with indicative questions to stakeholders**

### 1. Basic structure of the fee scheme

The Commission considers that ACER and stakeholders managed to implement the Fee Decision successfully and that in the past years overall the Fee Decision has fulfilled its objective of providing ACER with additional funding without placing an undue financial or administrative burden on stakeholders. Nevertheless, the planned amendment provides an opportunity to adjust the Fee Decision, if necessary, based on experience with its implementation since 2021 (e.g. clarification concerning the calculation of the correction amount insofar as it should be calculated by subtracting the transaction records-based fee component paid *after the reduction factor is applied* in the previous year).

**Questions for consultation:** *What is your experience with the Fee Decision and its implementation? Do you see a need to correct certain aspects? If yes, what should be changed? Please provide explanations.*

### 2. Inside Information Platforms (IIPs)

Pursuant to Article 4a of the amended REMIT and once the Commission Regulation (delegated act) supplementing this Article is adopted<sup>1</sup>, ACER will be in charge of authorising and

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<sup>1</sup>According to Article 4a(8) of REMIT, the Commission shall adopt such delegated Act by 8 May 2025.

supervising Inside Information Platforms (IIPs), going beyond the current registration of such entities by ACER.

The Commission proposes that each IIP would need to pay annually a flat enrolment fee equivalent to the one paid by Registered Reporting Mechanisms (RRMs). For the envisaged level of this fee see section 3.1 below. This means that a similar component like the transaction records-based fee component for transaction reporting should not be required for the publication of inside information.

**Questions for consultation: Do you agree with the above proposals as regards the fees to be paid by IIPs? Please provide explanations.**

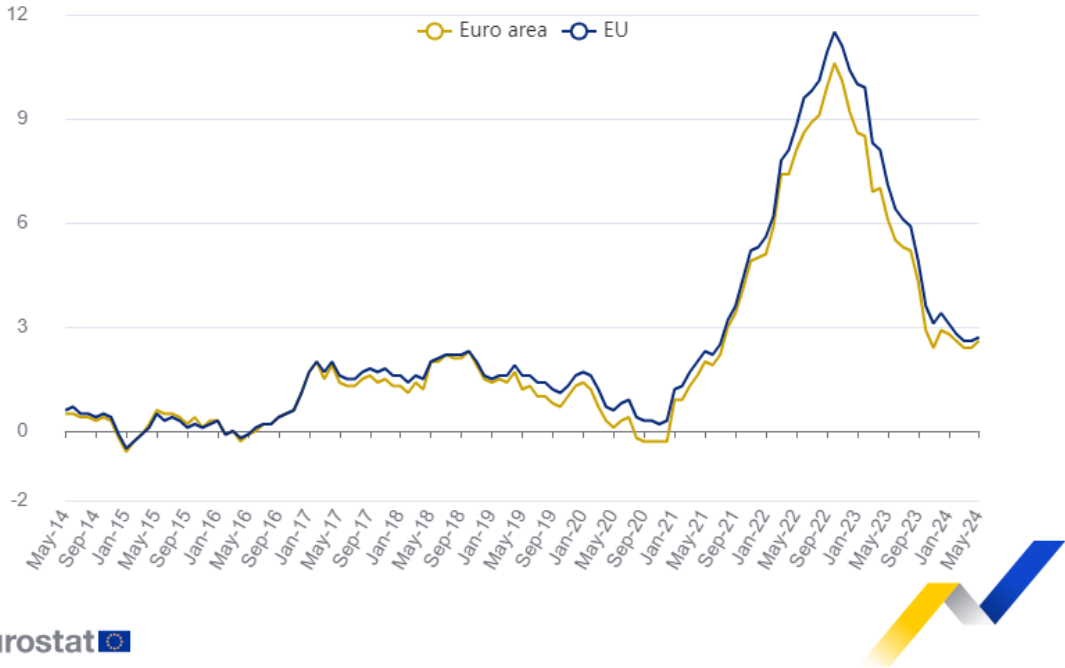
### 3. Covering ACER’s increasing costs and for implementing additional REMIT tasks

ACER’s costs for implementing REMIT have risen considerably: from around EUR 8.8 million costs eligible for funding by fees in 2021 to around EUR 12.4 million in 2024. ACER’s costs for implementing REMIT are expected to further increase given ACER’s additional tasks according to the REMIT revision: costs eligible for funding by fees are estimated as around EUR 17.3 million in 2025. Inflation, more high-frequency trading and additional tasks under REMIT are the three main reasons for rising costs which so far have not been matched by increasing fee revenues:

#### 1. Inflation

The developments on inflation as of 2021 demonstrate that this is a factor to consider for the revision of the Commission decision on REMIT fees.

Annual inflation rates (%)



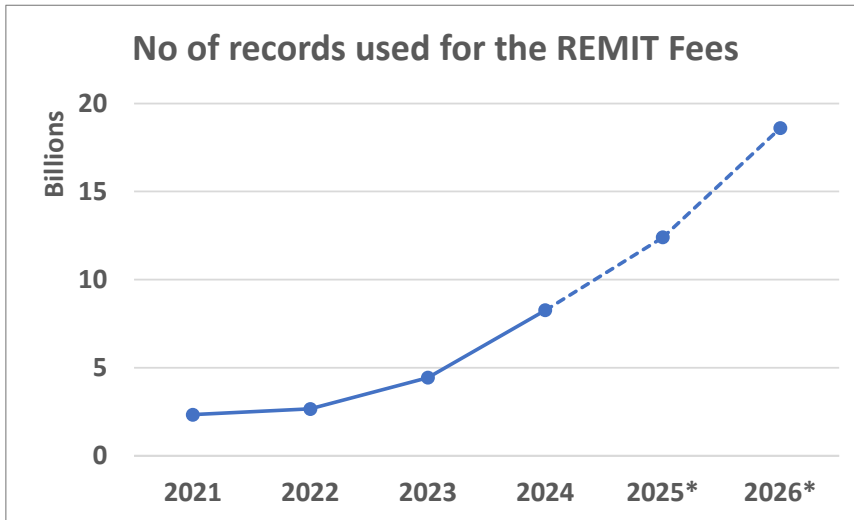
eurostat

Source: [Eurostat \(europa.eu\)](https://eurostat.europa.eu)



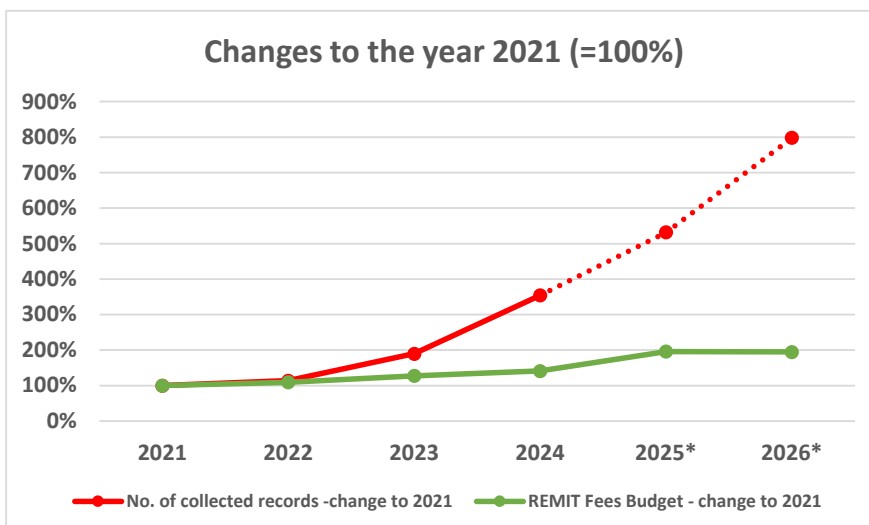
- Changes in the market, especially more high-frequency trading with an exponential increase of collected records not correlating with an equivalent increase of fee revenue.

Since 2021 each year the number of reported transaction records reported under REMIT has increased by around 50%. It is currently expected that the number of reported transaction records will even further increase once additional data types are added under a revised [REMIT implementing regulation](#).



\* Forecast for 2025 and 2026.

Currently, the highest fee subcomponent per data cluster is EUR 16,000 for more than 100 million transaction records in case of wholesale energy products in relation to the supply of electricity and gas using an organised market place or in case of wholesale energy products in relation to the transportation of electricity and gas, and EUR 16,000 for more than 10 million transaction records in case of wholesale energy products in relation to the supply of electricity and gas traded outside an organised market place. Therefore, the increase in the number of reported transaction records is not resulting in an equivalent increase in fee revenues, since due to high-frequency trading more and more market participants pay EUR 16,000 per data cluster despite reporting many more than 100 million transaction records under REMIT.



\* Budget numbers for 2025 and 2026 are taken from ACER's Programming Document 2024-2026 and do not include all costs based on REMIT revision.

### 3. The amendments to REMIT in 2024

The amendments to REMIT increase the scope and depths of tasks of ACER, notably:

- ACER will be in charge of authorising and supervising Inside Information Platforms (IIPs) and Registered Reporting Mechanisms (RRMs), going beyond the current registration of such entities by ACER;
- ACER now has the task of collecting all suspicious transaction or order reports which now all persons professionally arranging or executing transactions across the EU have to report;
- ACER now has complementary powers to investigate potential breaches of REMIT if two or more Member States are concerned.

The legislative financial statement accompanying the [Commission's proposal for amending REMIT](#) estimates that in total 25 additional full-time equivalents (FTE) will be needed, phased in from 2024 onwards to 2027. ACER will also receive additional funding from the EU budget, but costs for enhancing the REMIT IT system and for at least two thirds of the additional staff will need to be funded by fees.

Furthermore, [Article 83 of Regulation \(EU\) 2024/1789 on the internal market for renewable gas, natural gas and hydrogen](#) extends REMIT to wholesale hydrogen markets. The legislative financial statement accompanying the [Commission proposal for revising the Gas Regulation](#) estimates that this will require in total 7 additional FTE, phased in from 2024 onwards to 2027. All those staff will need to be funded by fees.

#### 3.1 Flat enrolment fee component

Whilst the flat enrolment fee for IIPs will be newly set as described above, the Commission proposes to increase the flat enrolment fee component to be annually paid by each RRM to a level of up to EUR 20,000.- (currently at EUR 9,000), the level depending on other changes to the Fee Decision, especially if an additional annual supervisory fee is introduced or not (see section 3.3 below).

**Questions for consultation:** *Which level of flat enrolment fee do you consider as appropriate? Please provide explanations.*

#### 3.2 Transaction records-based fee component

The Commission proposes to (i) add additional data clusters beyond the current highest data clusters of more than 10 million transaction records (for supply contracts not using an organised marketplace) or more than 100 million transaction records (for all other contracts) and (ii) to increase the level of the fee subcomponent for each data cluster.

##### 1. Additional data clusters

One option is to add additional data clusters for each additional 10 million / 100 million transaction records. Another option is to add data clusters continuing the current progression of number of transaction records, meaning the next data cluster would be more than 10 million to up to 100 million transaction records / to more than 100 million to up to 1 billion transaction

records. Data clusters could also be defined according to a formula in-between those two options.

2. Fee subcomponents for each data cluster

Currently, the fee subcomponents per data cluster for transaction records are outlined in Articles 6.2 and 6.3 of the Fee Decision.

Transaction records per data cluster			Fee Subcomponent
No. of records - from	No. of records - to	Fee subcomponent in EUR	Increase Factor
1	1,000	250	
1,001	10,000	500	2x
10,001	100,000	1,000	2x
100,001	1,000,000	2,000	2x
1,000,001	10,000,000	4,000	2x
10,000,001	100,000,000	8,000	2x
100,000,001		16,000	2x

The above table presents the fee subcomponents per data cluster for transaction records as specified in Article 6.2, along with the corresponding factor by which the price of each subcomponent increases in relation to the preceding line. For data clusters exceeding 100 million transaction records, the fee subcomponent is currently fixed at 16,000 EUR.

A similar logic applies to the fee subcomponents outlined in Article 6.3 of the Fee Decision, where the pricing structure follows the same incremental approach.

The Commission is considering the following amendments:

First, for each of Articles 6.2 and 6.3 of the Fee Decision, the Commission proposes to increase the level of the fee subcomponent for the **first data cluster** by 20%, meaning EUR 300 (instead of EUR 250) (“First Amendment”).

Second, for each of Articles 6.2 and 6.3 of the Fee Decision, as regards the fee subcomponents for the further data clusters, the following options are being considered:

- one option is to keep the current factor of two (referred to in the table above as “x2”) according to which the levels of the fee subcomponents increase for each additional data cluster, hence that the fee subcomponent to be paid for each additional data cluster is doubling for each additional data cluster (“Second Amendment, Option 1”).
- An alternative option would be to increase the fee subcomponents by a higher factor, e.g. 2.1 or 2.2 (“Second Amendment, Option 2”).

Third, for each of Articles 6.2 and 6.3, the Commission proposes to add more data clusters to reflect the increasing use of high-frequency trading. This means that additional lines would be added at the end of each of the tables in Articles 6.2 and 6.3 of the Fee Decision. These additional lines would correspond to additional data clusters. In practical terms, the new lines in the table presented in Article 6.2 could apply to every additional 100 million transaction records, while in the case of the table in Article 6.3, the new lines could apply to every additional 10 million transaction records (“Third Amendment”) (For completeness, please also refer to the discussion in sub-section 1 of this section).

For illustrative purposes, below is how the table in Article 6(2) of the [Fee Decision](#) would look like in case the Commission’s First Amendment, Second Amendment Option 1 (applying a factor of 2) and Third Amendment were to be adopted.

Transaction records per data cluster			Fee Subcomponent Increase (Factor and Absolute Change)
No. of records - from	No. of records - to	Fee subcomponent in EUR	
1	1,000	300	
1,001	10,000	600	2x
10,001	100,000	1,200	2x
100,001	1,000,000	2,400	2x
1,000,001	10,000,000	4,800	2x
10,000,001	100,000,000	9,600	2x
100,000,001	200,000,000	19,200	+9,600 EUR
200,000,001	300,000,000	28,800	+9,600 EUR
300,000,001	400,000,000	38,400	+9,600 EUR
400,000,001	500,000,000	48,000	+9,600 EUR
.....	.....	.....	.....

In addition, below is how the table in Article 6(2) of the [Fee Decision](#) would look like in case the Commission’s First Amendment, Second Amendment Option 2 (applying a factor of 2.1) and Third Amendment were to be adopted.

Transaction records per data cluster			Fee Subcomponent Increase (Factor and Absolute Change)
No. of records - from	No. of records - to	Fee subcomponent in EUR	
1	1,000	300	
1,001	10,000	630	2.1x
10,001	100,000	1,323	2.1x
100,001	1,000,000	2,778	2.1x
1,000,001	10,000,000	5,834	2.1x
10,000,001	100,000,000	12,252	2.1x
100,000,001	200,000,000	24,505	+12,252 EUR
200,000,001	300,000,000	36,757	+12,252 EUR
300,000,001	400,000,000	49,009	+12,252 EUR
400,000,001	500,000,000	61,262	+12,252 EUR
.....	.....	.....	.....

**Questions for consultation:** *If the current factor of two, according to which the levels of the fee subcomponents increase for each additional data cluster, were to be increased, which level of do you consider as appropriate (e.g., 2.1, 2.2, other)? If you disagree with the factor increase, please provide relevant explanations. Please also provide your views on all amendments / options considered in this section.*

**3.3 Additional annual supervisory fee**

The Commission takes note that the current Commission decision on REMIT fees provides for a correction mechanism in case the collected REMIT fees exceed ACER’s eligible costs, but the current Commission decision on REMIT fees does not provide for a correction mechanism in case the collected fees do not satisfy ACER’s eligible costs.

In order to ensure that fees cover the eligible costs incurred by ACER, an option is to add an annual supervisory fee for RRM and IIPs also to reflect ACER's increased mandate:

For RRM, the basis would be the planned budget for the respective year for transaction information related costs. From this amount the estimated revenue from the flat enrolment fee and transaction record-based fee component would be deducted. The remaining costs to be covered would be split among all RRM according to their respective share of the total number of transaction records disclosed through all RRM. A minimum annual supervisory fee in the range of EUR 15,000,- to EUR 25,000,- per RRM could be set.

For IIP, the basis would be the planned budget for the respective year for inside information related costs. From this amount the estimated revenue from flat enrolment fees would be deducted. The remaining costs to be covered would be split among all IIP. This could either be split as an equal amount considering that IIPs are only paying a flat enrolment fee or according to their respective share of the total number of Urgent Market Message (UMM) records disclosed through all IIP. A minimum annual supervisory fee in the range of EUR 5,000,- to EUR 10,000,- per IIP could be set.

**Questions for consultation:** *What do you think about such an additional fee component? Do you see other options to ensure that fee revenues are sufficient to cover eligible costs given ACER's additional tasks? Please provide explanations.*

### **3.4 Automatic adjustment to inflation**

Fee schemes for other agencies (for example the [fee scheme for the EU Aviation Safety Agency EASA](#) and the [fee scheme for the EU Agency for Railways ERA](#)) provide for an automatic indexation of the fees to inflation, for example using [Eurostat's Harmonised Indices of Consumer Prices \(HICP\)](#) or the [annual updates of the remuneration of the officials and other servants of the EU](#). Such an indexation could provide stability to the fee scheme since it could avoid the need of regular revisions of the Fee Decision. It could also allow for a more careful increase of the fee levels in this amendment, since without indexation the increase with this amendment would need to take into account possible inflation driven higher costs in the future.

**Questions for consultation:** *What are your views on how the Fee Decision could provide for cost increases due to inflation? Please provide explanations.*

## **4. Final remarks**

Otherwise, the Commission proposes to maintain the basic structure of the fee scheme as laid down in the Fee Decision.

**Questions for consultation:** *Do you have any other comments or recommendations?*

### **Contact:**

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