



*Regulation of the European Parliament and of the Council on wholesale energy market integrity and transparency (REMIT) - Technical Advice for setting up a data reporting framework*

## **Question list for the OTC Traders/Brokers Workshop held in Brussels on March 29, 2012**

### **Introduction**

*REMIT, the EU regulation on Energy Market Integrity and Transparency, became legally binding in all EU Member States on December 28, 2011. No further national legislation is outstanding. REMIT aims at preventing market manipulation and insider trading in energy markets through increased transparency and enforcement. While the rules on market manipulation and insider trading are already in place, the regulatory requirements for market data reporting under Article 8 will come into force only six months after the EU Commission issues implementing acts to this effect.*

*PricewaterhouseCoopers ("PwC") in cooperation with Ponton Consulting ("Ponton") have been awarded a consulting contract supporting the Commission (DG Energy) on technical advice for setting up a data reporting framework for REMIT. A transaction register will be established by the Agency for the Cooperation of European Energy Regulators ("ACER") until 2013. PwC and Ponton are advising both the Commission and ACER on the format of the relevant gas, electricity and underlying transportation transactions as well as on reporting arrangements for data related to the use of generation, production, transmission, storage, etc, including question of how to retrieve market participants' relevant production and generation capacities and how to store this in ACER's information systems.*

*This includes the evaluation of existing sources of information, the organization and evaluation of stakeholder workshops with traders, brokers, exchanges, national regulatory authorities, transmission system operators as well as the development of a high level IT concept. Taking the interdependencies with regulation of financial markets (e.g. MiFID and EMIR) into account and taking lessons learned from the ongoing international implementation of the Dodd-Frank Act is crucial.*

*REMIT covers practically all energy traders, transmission system operators and energy intensive industrial companies. Achieving regulatory compliance in the legally required time frame will require top level management attention – both from an operational and IT side - for all major market participants. Being involved in the regulatory implementation process at an early stage should give market participants in the energy sector a head start for implementing the necessary changes to their business processes and IT with the least amounts of effort and uncertainty.*

## How to Answer the Questionnaire

The purpose of this project is to give technical advice regarding the data collection according to Article 8 REMIT. When defining the requirements, processes and data formats for reporting in detail, the Commission and ACER intends to take into account the positions and needs of the involved stakeholders (Traders and Brokers, Exchanges, Electricity TSOs, Gas TSOs, NRAs).

The OTC Trader / Broker Workshop is one of five stakeholder workshops held in order to receive the views of the stakeholders on the subject matter. To make these workshops as productive as possible, questionnaires specific to each group of market participants have been prepared on grounds of previous research. The points addressed in the questionnaire will be discussed in the workshop and the discussion results will be documented accordingly.

In light of the short lead time, we would not expect you to bring set answers to all or even most of these questions to the workshop. However, to move the discussion forward, we would highly welcome it if workshop participants could – as far as possible – prepare their views in response to some questions in advance, and be prepared to explain at the workshop to allow for an informed discussion. This would be especially welcome for complex questions, or questions needing consensus among market participants in an optimum scenario.

This way no crucial point of view will be missed. In any case there will be room for discussion, especially for complex questions that might require further clarification or which are difficult to respond to.

OTC Traders and Brokers are asked to provide answers in written form by **12<sup>th</sup> April 2012**, i.e. two weeks from the date of the workshop, to their respective industry association representative taking care of the collection and forming of joint views. These representatives are:

- EFET: Filip Sleeuwagen, please mail to [f.sleeuwagen@efet.org](mailto:f.sleeuwagen@efet.org),
- Eurelectric: Charlotte Renaud, please mail to [crenaud@eurelectric.org](mailto:crenaud@eurelectric.org),
- Eurogas: TBD, Eurogas invitees will be informed separately

Please CC the project leads for trading at PwC, Volker Lischke [volker.lischke@de.pwc.com](mailto:volker.lischke@de.pwc.com) and at Ponton, Tilo Zimmermann [zimmermann@ponton.de](mailto:zimmermann@ponton.de). If member organizations would rather restrict the distribution of their individual responses to their respective industry association, they should send their answers to that representative only, and neither to PwC nor Ponton.

Answers should be inserted into this Word document in the answer font provided (Answer in blue Arial.) Please do not convert into PDF, and please do not fax. Use e-Mail with Word attachments only. In case of questions, please contact Volker Lischke or Tilo Zimmermann. Their full contact details are on the last page of this document.

EFET and Eurelectric will collate the answers of their members into a unified view, ideally coordinating with each other and with Eurogas, and provide this back to the PwC/Ponton project team and thus DG Energy by **26<sup>th</sup> April 2012**.

EFET, Eurelectric and Eurogas members' official answers contribute to building the data reporting framework for REMIT. All answers given directly to the PwC/Ponton project team in written form will be attached as an annex to the technical advice. The publication of the final report will be handled by DG Energy. If you do not want your answers to be made public, clearly mark the whole questionnaire or individual answers as **CONFIDENTIAL**. These Responses may only be used in aggregate fashion and without giving company names. Discussions during the workshop will never be cited in the final project report.

**DG Energy and ACER will each conduct a separate public consultation. The stakeholder workshops and questionnaires are not part of the official public consultation process for the REMIT Implementation guideline. This process has not started yet.**

This questionnaire filled out by: Name, Job Title  
Contact details: e-Mail, Phone  
On behalf of: Company Name  
Dated: Date of last revision

## Sources of Data Reporting

Market participants, or others on their behalf, shall provide the Agency with a record of wholesale energy market transactions. Wholesale energy products means contracts and derivatives, irrespective of where and how they are traded, as outlined in Art. 2. paragraph 4 and Art. 8 paragraph 1 of REMIT (further defined below). You can download the text of REMIT at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0001:0016:EN:PDF>

In order to allow the sizing and architecture of the ACER system envisaged and assess the coverage of the data framework, the order of magnitude of wholesale energy products transactions falling under REMIT is sought. It is understood that trading volumes fluctuate, so an approximate answer is sufficient. If not indicated otherwise, please give answers in monthly rates, i.e. 2.000 transactions per average month.

EFET members are invited to provide indication on how big their portfolio of transactions to be reported under REMIT is. The below mentioned wholesale energy products (regardless of whether standardised or non-standardised) are split as per the category types as stipulated in REMIT text. This will help understand the size of the entity in question and make an informed estimate on the percentage of the market covered in quantitative term.

### 1. How many wholesale energy market transactions under the REMIT definition does your company engage in?

#### Wholesale energy products means the following contracts and derivatives, irrespective of where and how they are traded:

- Contracts for the supply of electricity or natural gas where delivery is in the Union: this includes any and all (standardized and non-standardized e.g. with embedded flexibility) physically settled gas and power supply contracts, as well as the OTC physically settled forward transactions (e.g. EFET agreement deals) and spot contracts.
- Derivatives relating to electricity or natural gas produced, traded, or delivered in the Union: this includes all types of financial instruments, i.e. commodity derivatives in the sense of MiFID, where the underlying is power and gas such as EEX futures and financially settled OTC futures in gas and power (e.g. ISDA agreement deals).
- Contracts relating to the transportation of electricity or natural gas in the Union: this includes all types of transportation agreements, including capacity trades and storage contracts and the execution of such capacity rights agreement via nomination of commodity.
- Derivatives relating to the transportation of electricity or natural gas in the Union: this includes all financial instruments related to transportation, i.e. transportation/capacity derivatives.

#### General comments:

*Clearly liquidity and market structures differ across countries as such it should be expected that there will be a significant variation across markets in the level of REMIT relevant transactions.*

#### Feedback from members:

*This wide variation is shown in the responses received from members which shows a range between 1500 and 45000 deals per month.*

- 2. Out of the total in question 1), what is the share of wholesale energy market transactions under the four main categories of Art 2 (4) REMIT, split into OTC transactions (where the trading venue is not regulated as an exchange, e.g. brokered deals and purely bi-lateral OTC deals directly concluded between two counterparties) vs. transactions via regulated exchanges, e.g. EEX?**

**a) Contracts for the supply of electricity or natural gas**

**General comments:**

*The split between OTC and exchanges varies across different geographic markets and also between power and gas. In some markets the vast majority of transactions are executed through an exchange but in many other markets the majority of transactions are executed through OTC brokers although there is a proportion of these transactions which are also offered up for clearing through an exchange ('give-ups'). A smaller number of transactions are concluded on a purely bilateral basis including all non-standardised transactions – although the volume of some of these transactions can be higher than for standardised products.*

**Feedback from members:**

*Given the general comments above it should be expected that there is a wide spread and this is shown in the responses received from members which indicates a range between 1000 and 40000 for OTC and between 50 and 25000 for Exchanges.*

**b) Derivatives relating to electricity or natural gas**

**General comments:**

*Derivative power and gas markets continue to develop but they generally make up a small proportion of the overall level of transactions in the market although the situation differs across countries.*

**Feedback from members:**

*A range between 50 and 2500 for OTC and between 25 and 3000 for Exchanges.*

**c) Contracts relating to the transportation of electricity or natural gas**

**General comments:**

*Clearly there will be a much smaller number of contracts for transportation than for wholesale market transactions. In addition, in power the evolution of market coupling and implicit auctioning means that there is no explicit contract for transportation at this timeframe. There will also be significant differences across markets depending on how much transportation capacity is available and how it is offered to the market.*

*It is also not clear whether the question relates solely to primary capacity contracts and/or contracts concluded through the secondary market.*

**Feedback from members:**

*The feedback received from members suggests a range between 200 and 2500 for OTC – which is assumed is contracts concluded either directly with the TSO (e.g. through an explicit auction or on a secondary capacity market).*

*A range between 25 and 500 for Exchanges.*

#### **d) Derivatives relating to the transportation of electricity or natural gas**

##### **General comments:**

*There are very few 'derivative' transportation contracts that are concluded in the EU that EFET is aware of.*

##### **Feedback from members:**

*As such the indication from members highlights only a very limited number of trades.*

### **3. Out of the OTC subtotals in 2 a) and 2 b), what is the share of wholesale energy market transactions involving a broker?**

#### **a) Contracts for the supply of electricity or natural gas**

##### **Feedback from members:**

*As explained above there is significant variation across markets in the level of OTC market activity and this is reflected in the figures provided by members which shows a range between 70% and 100%. Generally at an EU level however the majority of transactions tend to be concluded OTC.*

#### **b) Derivatives relating to electricity or natural gas**

##### **General comments:**

*As explained above the structure of markets differ significantly in terms of the split between OTC and exchanges and this includes for derivative transactions.*

##### **Feedback from members:**

*A range between 40% and 99%.*

### **4. With regards to effective market surveillance - what is the need in reporting of other steps of the transaction life cycle in addition to confirmed trades (such as amendments or cancellations)? How frequent are these life cycle events?**

##### **General comments:**

*Amendments to trade can occur for a number of reasons and there is a balance to be struck in terms of capturing all amendments in a reporting regime and the complexity and duplication of reporting requirements on firms. Reporting the whole transaction life cycle would mean that firms would be required to report any trade amendments which could overburden the reporting requirement and not add much additional value to regulatory authorities for their duties to monitor market activity.*

*That said, it is recognised that information on the proportion of trades being amended may be useful so that regulators can be sure that there is not a significant amount of data that is missing from the trade repository. To this end, rather than full life cycle trade reporting regulators should investigate the possibility of firms reporting the number of trade amendments say every 6 months and then if necessary steps could be taken to understand better the nature of the amendments and whether any additional reporting requirements are necessary.*

*The level of trade amendments will also differ across markets depending for example on whether confirmations are dealt with electronically and the infancy of the market. Over time*

*the level of trade amendments should be expected to achieve a steady state level. The definition of a trade amendment can also differ across firms.*

**Feedback from members:**

*Given the above it is difficult to draw any firm conclusions from the responses received from members which indicates a range of between 1% to 30% of trades are amended.*

- 5. In your view, what are the key differences between balancing markets and futures markets that should be reflected in the reporting obligations? In the context of this question, “balancing markets” for electricity producers means regulating power during the operational hours, but also including intra-day trading.**

*The intention of the question is not clear. Most power and gas markets trade in different time frames and across both the physical and financial space although as explained above the relative splits will differ across countries. EFET does not see any explicit need to vary the reporting obligation across these different market places and timeframes. In particular EFET believes that standard wholesale products only should be reported – therefore balancing market transactions should only be reportable where they are classified as standard wholesale products.*

- 6. Is there a need to distinguish exchange-based trades from cleared OTC trades?**

*Generally EFET does not see a need to distinguish between the reporting obligations between exchange and OTC cleared trades. Of course as envisaged by REMIT firms have flexibility in terms of how they choose to meet the requirement to report transactions and could opt to request that exchanges could report both pure exchange trades and OTC cleared trades directly to ACER on their behalf. If there is a need to distinguish between exchange and OTC cleared transactions then this could require additional systems development at the trade execution level both within firms and also by OTC brokers. However as indicated above EFET does not see a need for this as all of the transactions will be reported to ACER regardless.*

- 7. How should non-standardized, long-term contracts which may include option-type flexibility rights be dealt with, in your view? How frequent are these deals and what is their share in overall transaction volume?**

**General comments:**

*As explained above non-standardised transactions are not a significant proportion of the overall number of transactions although some structured transactions can involve larger volumes than standardised transactions. Feedback from members suggests a range between 0.1 to 15% of transactions is non-standardised – again this differs significantly depending on the market being looked at. As energy wholesale markets have developed, trading has generally migrated to OTC and exchange platforms and standardised transactions.*

*It is important to understand the nature of non-standardised transactions. By their very nature they are not standard products and therefore it is not appropriate to subject them to reporting regime for standardised transactions.*

*Such transactions are bespoke structured transactions that for example may include complex optionality in relation to volumes, interruptions, pricing, time spreads etc. The nature of the parameters will differ across contracts. The contracts themselves will be 'long form' contracts*

*outlining all of the commercial and other terms for the transaction. It would not be possible to report these contracts through the standardised reporting regime.*

*Under the Third Energy Package all firms must keep records of all transactions (including non-standardised transactions) for a period of at least 5 years. Regulators always have the right to request records from firms. As such, EFET does not support a requirement to report non-standardised transactions directly to regulators. However, if regulators decide they need greater visibility on non-standardised transactions one option would be for firms to report the number of transactions and volumes once a year.*

## Use of an existing Data Format

*The European Commission shall lay down the timing and form in which both trade data and fundamental data are reported (Article 8 paragraph 2 point (c) and paragraph 5 point (b) REMIT) meaning information related to the capacity and use of facilities for production, storage, consumption or transmission of electricity or natural gas or related to the capacity and use of LNG facilities, including planned or unplanned unavailability of these facilities*

### **8. Would you suggest an existing data format for reporting OTC trade confirmations and other OTC wholesale energy market transactions (trade data)? Which data format do you consider appropriate?**

*EFET considers it is important for regulators to rely on one existing open standard electronic transaction data format rather than expecting to source all data through common platforms.*

*In general, EFET recommends that an open standard for trade data exchange is mandated (possibly per asset class) and enhanced as necessary with regulatory specific data fields. It is highly recommended that the mandated standard is an existing standard already in use within the industry and/or asset class to exchange and match trade data, standard compliant data from different sources will by definition be compatible and thus suitable for submission to trade repositories. This approach further resolves a number of data content standardization issues (e.g. counterparty Energy Identification Codes, EIC – see below) using the energy industry market practices on this.*

*This approach would both reduce the likelihood of missing important commercial information (such as that related to the Parties to the Contract), since existing standards are tested, certified and in production for the vast majority of standard contracts (both between counterparties and between counterparties and brokers); and avoid an enormous amount of effort and potential delay in essentially re-inventing an existing facility already in use in the market place.*

*EFET recommends the adoption of the open EFET standard: Commodity product Mark-up Language (CpML), which is already widely adopted across the industry as it has been used by market participants and brokers for the last 6 years for electronic Confirmation Matching (eCM). Since June 2012 it has also been used in developing reporting requirements in the US under Dodd-Frank.*

*When considering the current list of fields for 'Parties to the Contract' we would therefore recommend reference to such existing standards as the first port of call.*

*In general it is better to rely on a single identification code rather than data attributes, such as name and domicile, since such attributes can change over time. Such changes are better managed by amending the details related to the code identifying the organization which are held in a centrally managed code library.*

*A single identification code would:*

- ensure continuity over time, in case the name of a counterparty or any other detail changes;*
- provide a central reference source ensuring that counterparty detail changes are propagated across the industry swiftly.*

*It is therefore recommended that:*

- a single codification scheme (possibly per asset class, for instance the EIC scheme in commodities) is mandated as part of the technical requirements to identify counterparties and intermediaries (such as brokers), and*
- the attributes are removed from the counterparty data requirement.*

Furthermore, the creation of any new coding schemes should be avoided, use of existing coding schemes (such as EIC codes for legal entity and delivery location identification in energy commodities) which are already utilised within existing data exchange standards is highly recommended in order to avoid a proliferation of equivalent but incompatible or incoherent alternative schemes which would otherwise undermine the aim of a homogeneous data set.

This will require both an agreed format and an agreed use of that format. It will also require an agreed product list across both exchange and OTC traded derivatives. ACER, ESMA and the implementation agent for Dodd-Frank (GTRfC) must define the rules for how this reporting will work in order to minimise the duplication of effort and reporting across the industry.

**9. For the existing data format given in 8), indicate the share of wholesale energy market transactions covered.**

**Feedback from members:**

A range between 50% and 80% of coverage in terms of transactions that are captured through the EFET CpML standard.

**10. Is there an existing data format suitable or adaptable for reporting (as opposed to disclosing) fundamental data, such as the format in use by an exchange e.g. EEX? Which data format do you consider appropriate?**

EFET does not support the need to report fundamental (or published REMIT inside information) data directly to ACER where it is already published on a publically available website (centralised at a national level). REMIT indicates that ACER and NRAs should make use of public sources of fundamental data (Article 8 Paragraph 5: "The reporting obligations on market participants shall be minimised by collecting the required information or parts thereof from existing sources where possible"). It is recognised that regulators need to have timely and effective access to fundamental data in order to monitor markets. EFET believes this can be achieved through reporting platforms that are centralised at the national level, and we encourage to allow TSOs for example to recover any efficient costs associated with providing national disclosure platforms for fundamental data.

There is also no single common standard/content at this stage for publishing/reporting fundamental data given its diverse nature. The development of a single standard would take significant time and expense and as such it would be more appropriate for ACER to gather information from existing regional platforms in order to avoid unnecessary costs and double reporting.

The 3rd Energy Package already specifies extensive disclosure requirements for fundamental data in many areas and this will be enhanced in due course by the proposed Fundamental data transparency guidelines for power.

**11. For the existing data format given in 10), indicate the share of fundamental data reports disclosed in your organization which is covered by such format.**

Currently, there is no standard format for how fundamental data is published by market participants either on their own websites or through some form of platform (e.g. BRMS in the UK, EEX platform in Germany etc). The Third Energy Package indicates what should be published but not the format of publication and as such individual firms and platforms have taken different approaches to the way in which data is being published. EFET does not support at this point in time the development of a standardised format for publishing/reporting

*fundamental data but it is important that information is published/reported in an efficient way and made available in a transparent, user-friendly and easy to access way.*

- 12. How should the reporting of ad-hoc news (e.g. unplanned non-availability of upstream production or other events relating to a delivery not arriving as planned that will affect the market) be structured? What would, in your view, be an appropriate structure or format to deal with sporadic reporting (as opposed to disclosing) of corrections to fundamental data?**

*Both REMIT and the Third Energy Package allow firms flexibility in terms of where fundamental data and REMIT (inside information) should be published. As explained above, EFET does not support the direct reporting of fundamental data and published REMIT inside information to ACER although it is recognised that a degree of centralisation at a national (or eventually at an EU) level would allow more effective and timely access for regulators and help to improve overall transparency levels in the market.*

- 13. In what way should reported data be encrypted and electronically signed? Do you have existing technical processes / standards in place to ensure integrity, data security, authenticity and guaranteed transmission of large sets of structured data? In what way should the appropriate reception of data by ACER be confirmed?**

*Security of data is crucial. EFET would encourage the adoption of very high levels of encryption and security based on the current EFET communications standard as a starting point. Some form of encryption/electronic signature is in order to ensure adequate authentication and confidentiality of communication. Moreover, it is key to use existing standards/protocol if possible in order to avoid duplicating existing arrangements and that this should be universally adopted.*

## Frequency of reporting

*The European Commission shall lay down the timing and form in which both trade data and fundamental data are reported (Art. 8 paragraph 2 point (c) and paragraph 5 point (b) REMIT).*

- 14. What frequency of reporting transactions and orders to trade (“trade data”) should ACER require in your view (real-time, nightly, hourly, end of the business day...), pursuant to Art. 8 paragraph 2 point (c) REMIT? What do you see as pros/cons if reporting frequency is lower or higher?**

*An appropriate balance must be reached in terms of ensuring regulators have access to the information they need to monitor markets and not placing undue burdens on firms. A requirement for best endeavours of D+1 reporting of transactions would strike such a balance with a maximum timeframe of say D+2. This would allow firms to implement an end of day (batch) solution for reporting transactions to ACER. If a real time reporting obligation was imposed this would involve a completely different solution to meeting the requirement which would be far more complex and costly to implement. For example:*

- it is easier to control a D+1/D+2 solution. For example, it may mean once a trade has been executed, or it could mean once a trade has been confirmed. If it is the latter then the rule would have to take into account that the time taken to confirm a trade can vary (between e-confirms and fax based confirms and according to counterparty);*
- “real-time” would have to allow for latency of networks and transfer mechanisms;*
- while amendments and deletion percentages are generally low, they are likely to be higher in the period immediately following execution. This could lead to the requirement for sending larger numbers of amendment and deletion messages that may not be required for an end of D+1/D+2 solution;*
- technically it is significantly more difficult to implement a real-time reporting system. For a batch solution this could be delivered by querying the data from the trade capture systems, mapping the data to the transfer format and transferring the data to the data repository; and*
- guaranteeing delivery of separate real-time messages is technically more difficult than providing daily report data. If the transfer of a daily report fails it is easier to re-send the data than to detect and re-send an individual message.*

*D+1/D+2 reporting to ACER should be sufficient for market surveillance purposes particularly as both exchanges and OTC brokers are required under REMIT to have in place arrangements for monitoring market activity. They will therefore become frontline ‘regulators’ of their own markets with access to real time transaction information.*

*Further information is needed from ACER on how they envisage the requirement to report orders to trade operating as these can be received electronically or vocally and it is not clear how all orders could be captured and reported to ACER. Firms do not generally capture this information in a systematic or comprehensive way within their own systems. If regulators decide that orders to trade do need to be reported it is recommended that these are reported directly by OTC brokers and exchanges that do systematically capture such information where they are placed through their platforms.*

**15. What frequency of reporting fundamental data do you consider appropriate, pursuant to Art. 8 paragraphs 5 and 6 point (b) REMIT?**

*As indicated above EFET does not support a requirement to report fundamental or published REMIT inside information direct to ACER where this is at least published at a centralised national (or EU) level. Where centralised national platforms are currently not available then ACER and regulators should allow sufficient time and funding (where appropriate) to deliver this as it is difficult to see how a direct reporting regime for fundamental and published REMIT inside information could be established.*

*The Third Energy Package specifies the content and frequency of publication for fundamental data (e.g. daily reporting). REMIT specifies that firms must publish inside information before it is traded on. This means that both fundamental data and published REMIT inside information are released to the market without any undue delay. Regulators can access the data from the existing national platforms and where these don't exist then sufficient time and funding (where appropriate) needs to be allowed to deliver these arrangements. However, in the event that any direct reporting is required it should be in the same timeframes as for transactions, i.e. D+1/D+2.*

## **Thresholds**

*The European Commission shall draw up a list of the contracts and derivatives to be reported [...] and appropriate de minimis thresholds for the reporting of transactions where appropriate (article 8 paragraph 2 point (a) REMIT).*

**16. Would you consider it appropriate that de minimis thresholds for the reporting of transactions (trade data) are introduced, as indicated in Art. 8 paragraph 2 point (a) REMIT? What should these be?**

*If any thresholds are used below which market participants do not need to report transactions to ACER it is suggested this is consistent with any thresholds used to define a wholesale market participant under REMIT. Generally however ACER should have access to all standardised transactions from wholesale market participants although there may be a need to consider the reporting burden on smaller players who only transact a very small number of transactions. It would not be appropriate to impose a reporting burden that forced smaller players (who are important providers of liquidity) to exit the market.*

*The European Commission shall adopt uniform rules on the reporting of fundamental data and on appropriate thresholds for such reporting where appropriate (article 8 paragraph 6 point (a) REMIT). At the moment REMIT merely provides for a threshold exempting certain final customers from its scope: contracts for the supply and distribution of electricity or natural gas to final customers with a consumption capacity of individual plants under the control of a single economic entity of less than 600 GWh per year in so far as those plants do not exert a joint influence on wholesale energy market prices due to their being located in different relevant geographic markets are not defined as wholesale energy products (article 2 paragraph 4 and 5 REMIT).*

**17. How is ACER's ability to detect market abuse impacted by allowing thresholds for the reporting of fundamental data (e.g. by requiring reporting of installed production capacity exceeding 100 MW) pursuant to Art. 8 paragraph 6 point (a) REMIT? Would you suggest more flexible reporting thresholds on a member state-by-member state/market-by-market basis?**

*Please see our answer to question 10 – EFET does not generally support direct reporting of fundamental or published REMIT inside data direct to regulators*

*It is for firms to determine themselves what constitutes price significant information that may need to be disclosed under REMIT as inside information. Guidance from ACER can help in this respect but ultimately it is the firm's own decision to determine price significance for disclosure of potential inside information.*

*The requirements to disclose fundamental data under the Third Energy Package clearly outline what all firms must publish and this information is also regarded as inside information under REMIT. In some areas this already specifies a disclosure threshold – for example 100MW in the proposed transparency guidelines for power.*

*As such, it is not appropriate for this work on developing a reporting regime to identify particular thresholds for reporting or publication of fundamental data or published REMIT inside information.*

## Delegating of Reporting Services

Market participants, or a person or authority listed in article 8, points (b) to (f) of paragraph 4 acting on their behalf, shall provide ACER with a record of wholesale energy market transactions, including orders to trade (article 8 paragraph 1 REMIT). Trade data shall be provided by the market participant, [...] an organised market, a trade-matching system or other person professionally arranging transactions (article 8 paragraph 4 REMIT).

**18. Would you consider assigning the task of providing ACER with a record of wholesale energy market transactions (“trade data”) to a third party? Please rate your likeliness to assign this task and name potential assignees according to the categories under Art. 8 paragraph 4 points (a) through (e) REMIT. This will help ACER in setting up the right rules for "reporting mechanisms", i.e. organizations that are authorized to fulfil reporting obligations under REMIT on behalf of a market participant. Please indicate willingness to assign the reporting task to:**

**a) Market participant itself;**

### **General comments:**

*REMIT allows firms flexibility in terms of how they discharge their reporting obligations for wholesale energy transactions. EFET strongly supported this policy when REMIT was being drafted and it remains convinced that this flexibility is crucial given that market participants are very different in terms of their size and structure and the level and geographic and product spread of their activity. For example, a small market participant only trading on one or two exchanges may decide to delegate responsibility for reporting transactions to these entities. However, a larger player trading across most EU power and gas markets (OTC, exchange and bilateral) may prefer to retain control over the reporting process as delegation would require agreeing terms and conditions with a large number of exchanges and brokers which would give rise to significant legal and operational risks (e.g. of non-delivery of reports).*

### **Feedback from members:**

*The majority of EFET members that responded indicated that they would be likely to report transaction data themselves to ACER. One indicated that OTC brokers and exchanges should report transactions concluded through their platforms directly to ACER and another indicated it would be unlikely to report transactions directly itself.*

**b) Organised energy market (regulated exchange where power, gas, or derivatives thereof are traded);**

### **General comments:**

*In the event that firms choose to delegate responsibility for reporting transactions on their behalf either to an exchange, broker or other party it is crucial that there is clarity on what would happen if their reporting party failed to deliver transactions to ACER according to the required timeframe.*

### **Feedback from members:**

*Notwithstanding the feedback from members highlighted above in response to point a) some indicated that they would also consider using exchanges to report transaction data on their behalf where they are concluded through the respective platforms.*

**c) Brokers;**

*Again notwithstanding the answers provided by members in response to point a) above a smaller number would also be willing to delegate responsibility for reporting to OTC brokers than use an exchange.*

**d) Trade reporting system (broker platforms);**

*Members expressed the same views as in response to point c) above.*

**e) Trade repository registered or recognised under applicable Union legislation on derivative transactions, central counterparties and trade repositories;**

**General comments:**

*The nature of this question is not clear as a trade repository cannot report transaction data as such – but rather it is the recipient of the transaction data either from exchanges/OTC brokers or direct from firms. Regulators will be provided access to the trade repository to receive the transaction data that is relevant to them fulfilling their duties to monitor market activity.*

*If possible it would be preferable that where a firm has already reported a transaction to another (non REMIT) repository that the relevant repository could report the REMIT information directly.*

**Feedback from members:**

*Comments received from members indicated that they would prefer to have one trade repository for all reporting obligations, i.e. across Dodd-Frank, REMIT and other reporting obligations.*

**f) Transmission System Operators for Power or Gas and TSO Platforms;**

**Feedback from members:**

*Some member indicated that they would consider using a TSO to report capacity contract information on their behalf. One also suggested it would consider using the TSO to report balancing market transactions. Some other members indicated they would probably report capacity transaction information directly themselves.*

**g) Third party acting, like matching agent on behalf of the market participant (please specify);**

*Notwithstanding the feedback provided by members in response to point a) there was mixed feedback on this issue. Some suggested they would choose a third party to report on their behalf and that EFETnet could be utilised in that respect. Others suggested they would chose to report directly themselves. One member suggested that if there are a number of repositories they would be more likely to use a third party to report on their behalf.*

**19. Would you consider assigning the task of providing ACER with fundamental data to a third party? Please rate your likeliness to assign this task and name potential assignees?**

**a) Market participant itself;**

*Please see our answer to question 10 on the appropriateness of reporting of fundamental data and published REMIT inside information. ACER should primarily make use of the existing transparency platforms at national/regional level. Where fundamental data is shared through a third party, market participants should not be held accountable if that third party fails to report or even publish the information.*

**b) Third party acting on behalf of the market participant (Please specify);**

*Please see our answer to point a) above.*

**20. Which main criteria would you use in making the delegating decisions under questions 18 and 19?**

*A number of factors would be considered by firms including:*

- the frequency of reporting and the ability of the third party to meet the requirements*
- the efficiency/reliability of the third party reporting systems and processes*
- whether the reporting obligation could be delivered through the use of existing systems/compatibility*
- compatibility with and scope for using EFETnet for reporting purposes*
- security and maintaining of confidentiality by the third party*
- the cost of providing the reporting service*
- the need to minimise legal and operational risks associated with delegating reporting to a third party*

## **Established Reporting Channels**

*Market participants shall provide ACER and the NRAs with fundamental and transactional data. The reporting obligations on market participants shall be minimized by collecting the required information or parts thereof from existing sources where possible (article 8 paragraph 5 REMIT).*

**21. What fundamental data - and in what format - is in your organization as per today available for collecting provided that adequate confidentiality measures are taken?**

*Market participants both produce and publish fundamental data according to the requirements set out in the Third Energy Package. Firms also publish inside information as required under REMIT. As explained above there is overlap between the two aspects but they will not be the same at all times. In addition, the format of such information varies significantly as there is no standardised format for publishing the data. Firms also collect fundamental data and published REMIT inside information from publicly accessible sources for their own internal analyses.*

*EFET would not support a requirement on firms to therefore report the fundamental data they currently have in their own systems both because regulators can access it from public sources already or because it has been gathered directly for firms for their own analyses.*

**22. What trade data - and in what format - is in your organization as per today available for collecting provided that adequate confidentiality measures are taken?**

*Economic details of a transaction (e.g. trade date, underlying, grid, start and end-date of delivery, price volume and the master agreement under which the transaction is concluded) tends to be captured by companies although the exact data fields systemically recorded will differ across firms depending on the systems and processes they have in place.*

*Firms also use different data standard formats for existing reporting or confirmation including: (i) FpML to DTCC GTR; and/or (ii) CpML; and/or (iii) EFETnet for Confirmation Matching; and/or (iv) ICE eConfirm for Confirmation Matching*

**23. Which of your existing or envisaged reporting obligations to regulatory authorities overlap (in parts) with reporting obligations under REMIT?**

*Transaction reporting has the potential to become very complex and burdensome for non-financial companies. Alignment between trade data reporting obligations under REMIT and especially EMIR, but also Dodd-Frank Act and MiFID is of high importance. Non-financial firms have not been subject so far to detailed transaction reporting regimes (unlike financial firms), and implementation of the reporting obligations under EMIR and REMIT will involve significant development of the existing systems and possible implementation of new processes, IT architecture and agreements.*

*Given the subject complexity, the relevant regulatory authorities must allow an appropriate implementation period for non-financial companies. The content and format of reporting, as well as the reporting framework development and implementation timeframe must be coordinated with other relevant competent authorities and shall not lead to double reporting. In particular, EFET, Eurogas, Eurelectric call upon ACER to work closely with ESMA, both in terms of a timetable for a consistent development and implementation of the reporting requirements and the format and content of these arrangements.*

*In order to ensure that non-financial firms have sufficient time to implement the necessary requirements, it is recommended that the go-live date for the reporting requirements is pushed back to later in 2013. This is particularly important as ESMA will provide its advice on the implementing rules under EMIR to the European Commission only in September, after which they will become legally binding. This will not leave a reasonable implementation period for non-financial firms.*

*We recommend that ACER hold joint workshops for this purpose with relevant experts from companies to help further develop the detailed reporting requirements under REMIT and EMIR. Consistency of format and codification schemes is essential if reporting complexity and costs are to be minimized and a single 'market dataset' (even distributed over multiple TRs) is to be established as a basis for consistent reporting across the various legislative packages (EMIR, REMIT and MiFID). Where possible existing open data exchange standards should be used as they comprise standardized, matching trade data already used within the industry to manage risk on a bilateral basis.*

*Once a comprehensive reporting regime is established under REMIT it should not be duplicated at a national level with additional transaction reporting obligations directly to NRAs.*

## **Market Abuse**

The CEER Report and the first ACER guidance on REMIT give examples of the various types of practice which could constitute market manipulation (3.4 ACER Guidance):

- False/misleading transactions (wash trades; improper matched orders; placing orders with no intention of executing them);
- Price positioning (market the close; abusive squeeze/"market cornering"; cross-market-manipulation; "physical withholding")
- Transactions involving fictitious devices/deception ("scalping", pump and dump, circular trading, pre-arranged trading
- Disseminating of false and misleading information (spreading false/misleading information through the media/through means other than the media)

**24. Applicable to Brokers only: Do you have a system in place to report suspected market abuse to your NRA in or are you considering such a system?**

**25. As a future consumer of published transparency data, what level of centralization and aggregation of published information do you see as appropriate?**

*EFET, Eurogas and Eurelectric believe a centralised publication is desirable as a pan European solution in the long term but suggests a more pragmatic approach which involves establishing centralized publication at a national level at least as a first step. Such centralisation at a national level can be potentially coupled with links on an ACER website.*

*EFET, Eurogas and Eurelectric request further clarity on specific legalities of when a market participant has effectively off loaded his obligation to publish inside information in a situation where centralized publication is in place.*

## Further Considerations

**26. Do you have further concerns, suggestions or opinions on the REMIT implementation or this project that have not been addressed in this questionnaire so far?**

*A number of additional points were raised by members including:*

- *There is a need to establish a stakeholder working group for REMIT implementation issues – particularly on reporting obligations*
- *The work needs to be broken down more effectively into IT, legal and regulatory issues*
- *Given the purpose of REMIT to prevent market abuse, it is not appropriate to subject intra-groups transactions and internal orders to reporting requirements as well. Intra-group transactions are not wholesale energy products executed in a 'market place' (consistent with EMIR) and therefore should not be reportable under REMIT*
- *Firms should have access to data reported to ACER (on an anonymous basis for transaction data) in order to facilitate in-house analysis as long as no commercially confidential information is published which may require some high level aggregation of data where appropriate*
- *Reporting standards (both in content, format, frequency) should not be duplicated at a national level – regulators should access transaction data directly from the trade repository and not impose additional requirements on firms*
- *Technical standards should maximally re-use existing technology and standards where these have demonstrated to work in an efficient and robust way*

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