

Consultation document 03/2012
Possible contribution of GME to compliance with articles 4 and 8 of Regulation (EU) No 1227/2011

The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to respond to the GME consultation and proposals to support energy firms to comply with disclosure and reporting obligations under Regulation No. 1227/2011 (REMIT).

EFET believes that disclosure and reporting obligations under REMIT should be maintained clearly distinguished:

- a) Article 4 introduced the obligation to **disclose inside information**, *including* information relevant to 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 ('fundamental transparency information'). This means that information deemed as inside information must be made available to the public and they should include assets' information, but they may be not limited to these.
- b) Article 8 introduced the obligation to 'provide the Agency with a record of wholesale energy market transactions (point 1), including orders to trade' ('**transaction reporting**') and the obligation to **report fundamental transparency information** (point 5). However the information reported under article 8.1 is not proposed to be publicly disclosed and the access should remain limited only to National Regulators and ACER.

Hence we interpret the proposals of GME to establish (i) a centralised *platform* to facilitate disclosure of inside information and (ii) a centralised *database* to facilitate reporting, both of transactions and fundamental transparency information, to ACER.

Furthermore, we interpret the GME proposal to be valid both for the electricity and gas market, even though currently GME does not collect any fundamental transparency or transactional information regarding gas markets.

There is clearly a balance to be struck in terms of ensuring:

1. that firms are able to efficiently and without delay disclose inside information in accordance with the requirements of REMIT and at an appropriate cost;
2. NRAs and ACER have prompt access to the inside information they need to effectively monitor wholesale energy markets;
3. a level playing field in terms of inside information transparency
4. proportionate reporting arrangements which do not lead to any undue burdens on market participants including avoiding any duplication of reporting;
5. maximum standardization of the process/format of data reporting, preferably based at maximum on CPML, to facilitate reporting.

In terms of reporting records of transactions, EFET considers GME to be eligible to become a RRM under REMIT, subject to conformity with organisational requirements defined by ACER which should be set on a harmonised basis, including the use of existing standardised trade and process data formats and protocols for each class of data as far as possible.

EFET therefore generally supports the concept of establishing RRM and welcomes the clarification that individual market participants can choose to become RRM for the purpose of reporting data to ACER or 'outsource this to a third party RRM.

The avoidance of double or overlapping reporting must be a key driver in the design and implementation of the overall regulatory framework into which energy firms are scoped, Once a

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent and liquid wholesale markets, unhindered by national borders or other undue obstacles. EFET currently represents more than 100 energy trading companies, active in over 27 European countries. For more information: www.efet.org

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

Finally, a critical aspect we see in the context of transactions reporting is the secure management of the information reported, in order to allow a sufficient level of confidentiality, responsibilities and liabilities, particularly relevant in case of possible failure in delivering the data by a third party service RRM or an exchange or broker. We have recommended ACER to include the service liability requirements in the description of the establishment criteria of the RRM and RRSs.

QUESTION 1. Do you deem it useful to rely on a centralised platform for compliance with obligations pursuant to article 4 of REMIT? Why?

In the context of designing the future inside information transparency regime, EFET supports longer term ambitions on centralisation of inside information through establishment of a single EU wide central aggregation platform or repository. We believe that this would support the creation of the single European energy market.

However, the practical difficulties of establishing sufficiently robust transparency platforms for disclosing inside information and standardisation of process and content of disclosure messages are also important considerations. It is crucial to minimise the reporting burden on market participants and unnecessary duplication of disclosure and reporting requirements on firms are to be avoided.

EFET supports therefore a stepwise approach that can take advantage of the existing sources of information, appropriately adjusted to facilitate compliance with REMIT requirements and best practices at national or regional level.

We believe that this approach would support the ACER and NRAs needs to gather "inside information" for the purpose of performing their enforcement role, which should not be onerous so as to prevent effective monitoring of wholesale energy markets.

EFET believes that a minimum level of harmonisation at EU level is deemed necessary to avoid multiple reporting schemes for similar information referred to various national markets. In this sense national/regional solutions must necessarily be temporary, because they may imply reporting and disclosure under different standards and more importantly they may neglect the importance of cross border trading. 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.

Until a central platform will not be available at European level, the creation of a centralized national platform for the publication of inside information in compliance with art. 4 of REMIT can improve the accessibility of inside information. It can be set up relatively easily with a minimum of cost as it is an aggregation site and it helps create a level playing field for all market participants with regard to transparency. The value of a centralized platform for market participants depends *inter alia* on the completeness and exhaustiveness of the information published, provided the centralised platform optimises cost efficiency and mitigates the risk of double reporting.

We think that this interim solution could be valuable only if specific conditions are met:

- Definition by the NRA of precise qualitative standards for the functioning and operations (e.g. stability of the system, publication timing etc.) of the platform;
- Use of existing flows of data and full interoperability with existing and future transparency platforms;
- Possibility of automatic sending of highly standardized information in addition to less structured information sent through files, web-forms, etc.

Thus, the creation of this centralized national platform for the publication of inside information seems to be useful only when it enables market participants to fully comply with REMIT once inside information is *communicated* to GME. The highest possible efficiency in the management of the platform has to be ensured, also avoiding the duplication of communications from market participants.

QUESTION 2. *If your answer to the previous question is yes, do you think that GME is suitable for playing such role? Why?*

In general EFET believes that GME could play a suitable role in this context, also as Regulated Information Service (RIS) for the reporting of fundamental transparency information to ACER, according to the terminology used by ACER in the recent consultation². We believe the role of GME as RIS should minimise the burden on market participants intended to delegate to third parties the reporting of regulated information in wholesale energy products.

Nevertheless, it is necessary that AEEG sets specific rules for the functioning of this platform ensuring consistency with REMIT rules and the implementing acts (e.g. organizational requirements for RIS). For instance, AEEG regulation should encompass the following areas:

- Specific key performance indicators defined in cooperation with ACER (according to the EU Commission Implementing acts) on publication timing, system stability etc,
- Availability of fall-back procedures for publication in case of unavailability of the platform
- Definition of roles, responsibilities and liabilities of the parties involved in the disclosure of the inside information under REMIT (GME, national and regional platforms and market participants).

QUESTION 3. *Do you think that the publication of inside information on GME's platform should be optional, leaving participants free to publish such information on their websites? Or do you think that such publication should be mandatory and regulated by AEEG, in order to maximise the centralisation and transparency of such information?*

REMIT introduced the obligation on wholesale market participants to disclose inside information, albeit it did not impose an obligation to *centralise* the publication of inside information. Nevertheless, as stated above, EFET believes that a centralised European platform for disclosure of inside information would be desirable and thus its creation should be facilitated.

As already underlined, the creation of a national centralized platform is useful for market participants if this is considered fully compliant with REMIT obligation under art. 4 once they transfer the information to the platform operator.

It is of paramount importance that AEEG set specific standards for the functioning and the operation of the platform (in line with REMIT obligation) aimed at ensuring the improvement of performances and the cost-effectiveness of the system. AEEG regulation should guarantee the maximum efficiency in the management of the platform in order to limit additional charges to users.

EFET believes that the publication of inside information on GME's platform should remain optional, leaving companies to choose for the publication on their websites. For this reason, we believe that this platform cannot in any case be considered to be mandatory if some crucial issues remain unsolved. We are in particular concerned about the profiles of responsibility for delegation of data publication to third parties: indeed GME affirms that, in case of use of its platform, the responsibility for *truthfulness*, *accuracy* and *timely disclosure* of the information remains with the market participants.

² See ACER's consultation document PC_2012_R_10 of 21 June 2012 "Recommendations to the Commission as regards the records of wholesale energy market transactions, including orders to trade, and as regards the implementing acts according to Article 8 of Regulation (EU) No 1227/2011. <http://www.acer.europa.eu>

EFET understands that market participants must provide reliable and *genuine* information and, in case of delegation of the publication to third parties, they must transmit this information in a timely manner to a registered RIS. However once the information is transmitted, the responsibility for *timely disclosure* should be on the RIS. In other words, we believe that the introduction of an intermediate layer/aggregator, like GME is proposing to act, must necessarily imply a transfer of the responsibility for timely disclosure. Firms should not be held liable for the failure of a third party service RRM/exchange/broker to report the required information to ACER.

Market participants will tend not to delegate publication to third parties that could fail while continuing to bear the responsibility. Of course market participants would remain responsible for inaccuracy that can be clearly attributed to its deficiencies. A clear transfer of responsibility would incentivise market participants to join the platform, although it is not mandatory.

Regarding the other pillars of the GME proposals, EFET believes that principles and procedures for admission, contents and deadlines must be harmonised as much as possible to minimise the burden on market participants active in different national markets.

Finally, the meaning of the statement '*GME would balance transparency requirements with the need for carefully managing competition aspects*' is not fully clear. EFET believes that the interpretation of transparency requirements should be similar in national energy markets. In case different interpretations can be the result of the design of national markets, EFET believes that the design of such markets should be adjusted accordingly also in order to facilitate the integration of European markets.

The publication of inside information on the GME platform shouldn't exclude the possibility for market to participants to publish inside information on their own website if they deem it advisable, in addition to the publication on the central platform. This opportunity should not be considered by GME as a fall-back procedure in case of unavailability of the platform. A specific back-up system should be established by GME to ensure timely publication also in case of technical problems.

QUESTION 4. Do you think that the proposed solutions are adequate to minimise the procedures of authorisation to operate on the platform?

We do not have objections to the details of proposed procedures. Nevertheless, it should be taken into consideration that the procedure under art.9 of REMIT provides for the registration of market participants with the NRA of the Member State where they are established (or resident, or active in case of market participants from Third Countries).

EFET would like to stress that the platform should be open to all parties active in the Italian energy market and not restricted only to those registered with AEEG. Indeed the registration scheme under REMIT is valid throughout the EU and national regulators should not require additional registration. Firms established in other EU countries (or outside the EU) might be already registered with other NRAs but they should still be allowed to disclose inside information through GME's platform.

In addition, we would like to stress the need for enhanced harmonisation. It can be very complex for companies active in different national markets to organise different processes and to meet different deadlines and security policies to report the same type of information. We urge GME, together with AEEG, to support proactively standardisation at EU level.

Furthermore, we think that the registration procedures should be limited to a simple request of a user ID and password for the access to the platform.

QUESTION 5. Are there any data falling under the reporting obligation of article 4 of REMIT that – under already existing operational, commercial or regulatory procedures – you already disclose externally, both on public and on restricted-access platforms? If your answer is yes, which platforms and through which channels?

Given the lack of transparency platforms for inside information the main approach to complying with the obligation to publish inside information as outlined under Article 4(1) of REMIT appears to have been through market participants making arrangements for the publication of inside information either on their own websites or a third party website such as facility operators, exchanges or TSO transparency platforms. Furthermore, it has been evident that the publication of inside information in certain circumstances has been monitored and disseminated further through media organisations such as Reuters and Bloomberg. In particular, concerning the Italian electricity market some of the information published by Terna³ support the obligation of energy companies to fulfil the disclosure obligation.

QUESTION 6. Do you deem it useful to allow market participants to fulfill their obligation of publishing inside information already resident on other public platforms (e.g. preliminary information published by Terna on GME's website) or restricted-access platforms pursuant to regulatory provisions (e.g. available capacities that participants report to Terna and that Terna transmits to GME under AEEG's Decision ARG/elt 115/08), by authorising the automatic transfer of such information from said platforms to GME's platform and its publication thereon?

EFET favours the utilisation of information already collected under existing obligations in order to facilitate compliance with the requirements under article 4 of REMIT. Indeed it should be noted that some of the information that are already required to be published by TSOs under the EU Regulation 714/2009 and under REMIT are still missing, even though they are mandatory and they would facilitate compliance of wholesale market participants (other than the TSO) with REMIT. In other words, we believe that the establishment of a centralized platform for the publication of inside information, also at national level, should facilitate the compliance with REMIT avoiding imposing duplication of communication flows. Thus, where information are already communicated and published on existing platforms (e.g. TSOs website), GME should get data from this existing sources, e.g. through automatic transfer.

QUESTION 7. If your answer is yes, which are the pre-requisites to guarantee the full operational and regulatory effectiveness of such approach?

The main obstacles we may see concerning the utilisation of existing platforms/databases of information collected concern:

- *lack of standardisation*: a minimum level of harmonisation, in particular concerning formats, should be defined already in the initial phase of the process in order to ensure aggregation of the information from many different firms by the platforms and facilitate any subsequent aggregation on a larger EU-wide scale.
- the *completeness and exhaustiveness* of the information currently required. For instance information regarding unplanned outages of generating units are not required to be reported separately under the TIMM, but are reported to Terna for other technical purposes. Furthermore also non-capacity related data considered to be 'inside information' are not required.
- the *timing* of data collection compared with the *timely disclosure* requirements under REMIT.

Therefore we believe that to ensure operational and regulatory effectiveness of such approach these aspects must be dealt with in addition to the issue of responsibility for timely disclosure mentioned above. Thus, the coordination about the timing of transmission of information to other

³ Terna Transparency Report

http://www.terna.it/default/home_en/electric_system/transparency_report_en.aspx

platforms where GME could get data for disclosure and publication is of utmost importance. Moreover, the data transfer procedure from one platform to another should be certified and reviews by AEEG in order to ensure full compliance with REMIT.

QUESTION 8. Do you think that the technical solutions proposed for data transmission on GME's platform are adequate? If your answer is no, why and which solutions do you propose?

With regard to the technical solutions proposed, we reiterate the views expressed in response to Question 4, namely that enhanced harmonisation is necessary to minimise the burden on market participants active in different national markets.

We wish to underline that the data communication process from market participants to GME should envisage a receipt of the reception of the information by GME. The entire process should be structured in two phases:

- Instant message of receipt of the information by GME when the data are communicated
- Publication of inside information within a reasonable timeframe (e.g. no more than 5 minutes) to be discussed in the implementation phase.

QUESTION 9. If you deem it useful that GME transmits - on your behalf - the data on transactions made on GME's markets to ACER, which constraints and which guarantees do you consider as necessary?

We deem useful that GME may offer a service to transmit transactional data to ACER. Our understanding is that organised market places may be required by ACER to report transactions in standardised contracts and orders to trade. EFET believes that the proposal to establish a centralised platform for the reporting of transactions can only be done through the creation of a European centralised database managed by ACER. This must necessarily be created on the basis of the single data format identified by ACER.

In this context, GME could play a useful role in collecting information related to transactions in the Italian gas and electricity markets, working as a Registered Reporting Mechanism (RRM), although it is of utmost importance that this will be done after the creation of a single standard and after having clarified how cross border trades will have to be reported.

ACER needs to be sure any entity reporting to it can deliver information using the required communication standards and protocols and as such a minimum set of tests/requirements should be fulfilled before GME` can become an RRM.

It is now crucial that ACER take forward as a matter of urgency defining the requirements for becoming a RRM – both direct reporting RRM's and third party service provider RRM's. This is important to allow market participants to take business decisions about how they want fulfill their reporting obligations under REMIT and for RRM's to be established.

QUESTION 10. If your answer is yes, do you deem it appropriate to extend the data reporting approach adopted on the PDE (as per TIMM) to GAS contracts? If yes, which constraints and which guarantees do you consider as necessary?

REMIT reporting requirements do not distinguish between power and gas contracts and as such supersede any national reporting scheme. If the data reporting approach on the PDE to be used for REMIT reporting purposes, it should be suitably adapted and updated to foresee proper compliance with REMIT requirements, including gas contracts which fall into scope of the regulatory reporting under REMIT,

Market participants should be however free to opt for reporting of transaction directly to ACER (acting as RRM's for themselves). In this case the access to data stored in the ACER database to national energy Regulators and other entitled entities should be ensured.

A critical aspect we see in the context of transaction reporting for both gas and electricity is the secure management of transactional information reported. Indeed a maximum level of security should be ensured in relation to data commercially sensitive. We believe that it is necessary to have data-authentication and confidentiality implemented.

QUESTION 11. Do you deem it useful that GME transmits to ACER the data on transactions made off the markets that it manages? If yes, which constraints and which guarantees do you consider as necessary, also in view of the required procedures for standardization of such transactions?

All reporting of transaction data under REMIT should be proportional with, and restricted to the stated objective of REMIT i.e. allow monitoring of potential market abuse. EFET supports GME's capability to report data concerning transactions concluded on the markets it manages. In doing so, as any other RRM, GME could additionally offer a service to collect information of transactions concluded bilaterally and in other markets. The main challenges that need to be solved in this case in our view are standardisation and data security management within the requirement that allows the reporting party to choose between acting as RRM itself versus outsourcing the reporting requirements to a third party RRM (see response to Q10).

QUESTION 12. If GME manages a platform for reporting inside information as described in para. II, do you deem it useful that GME - on your behalf and via the same platform - transmits to ACER the data concerning available capacities on the different energy infrastructures?

We see positively the proposal of GME to provide such a service. EFET believes that requiring market participants to report fundamental transparency information at the same time they are disclosed would imply duplication of efforts. We suggested ACER that the most pragmatic approach for ACER would be to collect this information through existing sources and platforms. Nevertheless we believe that this should be an option for market participants, in particular in case the issue of responsibility for timely disclosure remains unsolved.