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RE: EFET Contribution to ACER Public Consultation on REMIT Registration Format

The European Federation of Energy Traders (EFET) [1] welcomes the opportunity to respond to the public consultation on the REMIT registration format and supports a simplified light touch approach to the implementation of the market participant registration process. Article 9.1 of REMIT requires market participants entering into transactions which are required to be reported to ACER under Article 8.1 to register and as outlined in Recital 21 of the regulation the main purpose of this is "to enhance the overall transparency and integrity of wholesale energy markets" but also to ensure "a Union-wide level playing field for market participants".

[1] 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, please refer to: www.efet.org.

The registration process should not create any barriers for new entrants to national energy trading markets and, therefore, a clear, timely and transparent registration process which does not delay new entrants to the market is of the utmost importance.

We understand the key objective of the registration process is to identify those market participants that are active in EU wholesale energy markets for the purpose monitoring wholesale energy transactions. With this in mind we have a number of comments and suggestions that we hope will help facilitate a robust and simplified implementation of the REMIT registration process.

Q 1: Is the registration format proposed in Section [3.1] sufficient for the purposes of market monitoring?

EFET would suggest **a light touch automated registration process** that simply provides the market participant with the unique identifier to be used in the reporting of any transactional data. With this in mind there are a number of specific points we would like to raise and suggest to further simplify the data format outlined in section 3.1(a-f).

From an operational implementation perspective, all attributes that are finally agreed upon should have field specifications and examples to ensure consistent completion of the data. It should also be highlighted as to which fields are mandatory and which are optional for the purposes of registration. Excessive data elements would create unnecessary complexity for users and would fail to bring operational efficiencies to the regulators for the purpose of market monitoring.

Section 3.1 (a) – Basic Information

As indicated above it would be useful to clarify what is expected in the following fields under **basic information**:

- Legal form (Private, Public, etc?)
- Place of publication of inside information (Website?)
- Website URL (duplicative with above field?)

Section 3.1 (b) – Country Relevant Information

EFET does not believe there should be an option to allow NRA's to gather **country specific data** as this will lead to an inconsistent implementation of the registration process for market participants and will result in an un-level playing field. The proposal to give NRAs the powers to collect additional country-relevant information will increase the compliance burden for firms who would be asked to provide any additional information on top of the established set of information, which will not serve the purpose of harmonisation. We would suggest deleting this part of the data format requirements also because this is not specified as a requirement within the regulation. With this in mind we would like to highlight that Germany has already made a proposal for additional and duplicative arrangements and this is something that should be discouraged within ACERs advice to the commission on the registration format.

Section 3.1 (c) – Corporate Structure Information

EFET does not support the requirement to provide information pertaining to the corporate structure of an organization. We believe this will be complicated to provide and burdensome to update, but is also unnecessary in light of information collected through the transaction reporting process, in particular with regard to "related entities".

This section also refers to the 'ultimate controller' or 'beneficiary' of the market participant's trading activities but does not elaborate as to who this could be and in the case of a public listed company, could be taken to mean the shareholders, although clearly this is not what is intended. Article 8.1 requires the beneficiaries to a transaction to be reported through the transaction reporting process, and therefore collecting it through the registration process seems duplicative and so EFET would suggest the deletion of this part of the data format proposal, or clarifications that capturing the beneficiary is done through the registration process alone and therefore not required again as a field in the transaction reporting process.

Section 3.1 (d) – Contact Section

The notification of several **persons responsible for operations and trading** can potentially lead to confusion and duplication of communication. There should be only one single contact person for communication with NRAs/ACER. The persons responsible for operation and trading decisions should only be notified, but not for the purpose of communication with the NRA, as this should be concentrated via the aforementioned contact person. Also for each company it

should be permissible to dedicate one person to be responsible altogether for operation and trading decisions, most likely on the managing level (board level) to avoid that firms have to follow-up the usual fluctuation of staff members at a company level.

Q 2: Which further information fields are needed for identifying the ultimate controller or beneficiary?

EFET does not believe this should be required information for the purposes of the registration process. Article 8.1 requires the beneficiaries of the transaction to be captured as part of the transaction reporting process and therefore it seems duplicative to request this information as part of the registration process. See response to Question 1 – Section 3.1.c.

Q 3: Do you agree with the proposed processes for registration and updating? Are there suggestions for further simplifying the process and the associated information flows in particular for the initial populating phase of the registers?

Section 2.2 (a) of the public consultation paper stipulates that market participants have the primary responsibility of both initiating the registration process and updating the information they provide to NRAs. EFET understands there will be further guidance in relation to clarifying what constitutes a market participant and what is captured as a wholesale energy product, clearly it will be important to ensure that any future guidance provides the right indications to allow impacted parties to make a clear and consistent assessment and therefore understand whether or not registration would be required.

The design of the registration process should take into account **information, which is already recorded or requested** pursuant to existing national regimes to enable a timely registration process before the 3 months period expires (so-called "Pre-Population of National Registries).[2] This holds true in particular for Germany, where several hundreds of firms have to register and that all registrations have to be handled by the BNetzA at the same time. Therefore, there is a risk that the BNetzA cannot handle all the registrations at the same time within the given timeframe and cannot send a statement of compliance on time. Hence, using already existing information sources would enable NRAs to process all requests for registration on time.

[2] See also Q4.

The registration process should capitalise on information already provided to NRAs so as to avoid multiple data submissions, e.g. data submitted under **the licensing requirements** for energy trading in some Member States. That means that information sent to NRAs for the purpose of a registration should be taken into account for the licensing proceedings and vice-versa. For this purpose, it would make sense that the information scope of these different regimes are harmonised.

Section 4.1.b of the consultation outlines a provision for National Regulatory Authorities (NRAs) to carry out **registration checks** depending on national rules. It remains unclear what rules are being referred to here, however this leaves an opening for inconsistent implementation of the registration process by allowing specific rules to be applied by different NRAs. Indeed this raises the broader question as to the purpose of this part of the process and whether it would be possible for any such NRA checking to result in the refusal of a market participant to be registered? We believe this is not in line with the regulation and in particular recital 21 which calls for a level playing field for market participants.

We note that trading is prohibited until a market participant has been registered (Section 4.1) but it remains unclear how this process will be policed and what transitional arrangements would be in place for those market participants already registered with their NRA's through, for example, shipper licensing arrangements. Therefore, an appropriate transitional period has to be granted by NRAs, so that these firms have enough time to complete their registration process before such a prohibition is applied.

Finally, it is also important that the information required for the purpose of registration is harmonised with such information required for transaction reporting purposes. In other words, the transactions reporting regime should allow use of the information provided in the context of the registration of market participants.

Q 4: What do you consider as an adequate response period for completing the registration/updating process? Once the NRA has performed any check on the documentation required by national rules or if no additional documentation is required by such rules, should the process be completed in real or close-to-real time?

REMIT grants NRAs a transitional period of 3 months for the establishment of national registers after the Implementing Acts are adopted (pursuant to Art. 8 (2)) and firms have to complete their registration 6 months following the adoption of Implementing Acts. This leads to the conclusion that NRAs should set up the national register, within an appropriate timeframe, i.e. before the expiry of the above-mentioned 3 months period to give market participants sufficient time to complete the registration process. In this context, the NRAs should also enable a registration in English. A registration in national language could be deemed as a barrier to entry for SMEs.

With regard to the update of information, **the term 'promptly'** according to Article 9 (5) REMIT should be clarified.

Q 5: Do you agree with the Agency's proposals on publication of part of the European register? In particular, should additional information on market participants be made publicly available?

The consultation document indicates that at least the basic data format will be made public however we would question whether all aspects of the basic data should be made public and indeed how this would be beneficial from market integrity and transparency perspective. In particular we draw your attention to the VAT number and BIC number which we do not believe should be published. Our suggestion would be that if any information is published, this should be limited to the company name only and location of publication of inside information where applicable.

Q 6: Do you agree that the timeliness of the publication of both new registrations and updates is of paramount importance?

Section 5.2 of the consultation indicates that timeliness of publishing updates to the register is of paramount importance, but does not justify why it is of paramount importance.

Q 7: Given governance and operational requirements as outlined in this section, which of the three options listed in Section 6.4, if any, would you consider to be the most appropriate? Which one would minimise the overall implementation costs? Which existing code would be the preferred one in case Option A is selected? What are your views on the proposed format for a new code under Option C?

The introduction of a complete new counterparty code (to identify market participants) will cause substantial cost for hundreds of firms across the EU. This speaks in favour to use the most widely used existing codes for counterparty identification in the European energy industry, the EIC code (Energy Identification Code), until a (cross-sectoral) global Legal Entity Identifier (LEI) code system is introduced and translated into business processes. We, therefore, support Option B as outlined in the consultation document, provided unique identifier generated by ACER is aligned to the anticipated regulatory usage of the LEI.

In preparation for the anticipated regulatory usage of the LEI, firms should use for the time being existing codes as a business-driven solution widely accepted in the marketplace and actively consider how the LEI can be mapped to existing identifiers used in multiple internal business and compliance applications across the industry.

Q 8: Are there alternative options that could complement the three ones listed in Section 6.4, while satisfying the governance and operational criteria listed in Section 6.3?

See answer to Q 7.

Q 9: Is there any existing code which fits the informational and governance standards required?

See answer to Q 7.

Q 10: Are there any other comments you would like to raise in conjunction with this public consultation on the REMIT registration format?

The present consultation does not allow for detailed discussion on technical implementation, as many conceptual and fundamental content related questions on standardization of registration process per se remain unresolved.

We believe the usage of a single, harmonised IT-system and format for registration would be preferred by NRAs, ACER and affected parties. Corporate groups with several, separate legal entities active in different Member States should not be subject to different IT-systems and formats.

The following considerations are of particular interest for larger corporate groups:

- Larger corporate groups have several and separate legal entities, which are active on the energy markets and, therefore, are all potentially market participants with the duty to register with the relevant NRA (e.g. one group trading company established in Germany registers with the BNetzA, another group supply company established in the UK registers with Ofgem, the next Hungarian group transportation company with its local NRA, etc.). If this holds true under REMIT, then each single, separate group company has to register through a separate own process with its local NRA. This would lead to a multiplication of registrations and a complicated coordination process within corporate groups. We believe that a single group-wide registration process for all group companies could be easier to handle for firms and NRAs, at least for the very first registration round after the entry into force of the Implementation Acts.
- If several and separate registration processes for each group company are necessary, then at least each group company should not be forced to supply certain information to each of their NRA through a separate process which could be better provided for all group companies at once and updated subsequently. This holds true in particular for the required description of the corporate structures and corporate relationships within a corporate group for which the corporates usually have an overview at the holding level of a corporate group. At least it should be allowed that the same set of information is sent to each of the NRAs to avoid that each single entity has to create its own registration profile.

- Also, in case of several and separate registration processes for each group company the harmonisation of the required information, IT-systems and format becomes very important to avoid multiple national registration regimes.