

**EFET¹ response to ACER Public Consultation on
REMIT Functioning and Usefulness of the
European Register of Market Participants
(PC_2016_R_01)**



22 April 2016

Questions on improvements of the Registration Format of the European Register

1. Regarding fields 112 and 316 ('VAT number' of the market participant and ultimate controller), taking into consideration that some market participants and ultimate controllers do not have a VAT number, ACER proposes to add an additional checkbox labelled: 'I do not have a VAT number.' Moreover, taking into account that different formats for VAT identification apply outside the European Union, ACER proposes to adopt a more flexible format for fields 112 and 316 for non-EU market participants. Do you agree with this change? If not, please justify your reply.

Yes we agree.

- 2. Regarding the reformulation of field 113 (Energy Identification Code ('EIC') of the market participant):**
- a. EIC codes are widely used for reporting transaction and fundamental data. The current registration format allows only one EIC code to be provided by a market participant, although there may be several different types of EIC codes related to the same market participant and used for reporting. Moreover, although the EIC codes are publicly available, other pieces of information, such as the location of the facility identified by the EIC code, are not public. Taking into consideration the need to identify for monitoring purposes to which market participants different EIC codes belong to, the current registration format can be developed to allow the introduction as mandatory fields of all EIC codes (i.e.: EIC X, EIC Y, EIC Z, EIC T, EIC W and EIC A) related to the same market participant. What are the pros and cons of such an approach? Please explain.**

In our view, there is no added value in collecting the various EIC codes as regards fulfilling REMIT provisions. Overall, the registration process should be straightforward, with only essential information. It is about identifying the market participant, not about all of its activities represented through various codes. Transaction reports provide sufficient details regarding the counterparties and

¹ The European Federation of Energy Traders (EFET) promotes and facilitates European energy trading in open, transparent, sustainable and liquid wholesale markets, unhindered by national borders or other undue obstacles. We currently represent more than 100 energy trading companies, active in over 28 European countries. For more information, visit our website at www.efet.org.

delivery. Providing all the EIC codes can prove unnecessarily burdensome to market participants, while adding little additional value. Such additional information is easily accessible through other data banks.

The different types of EIC codes have been put in place to support different processes, from identification party codes (EIC X) to area codes (EIC Y), measurement codes (EIC Z) and many others. As the REMIT reporting process targets party identification, only EIC X codes could be taken into account.

In addition, providing an EIC code should not be mandatory. In fact, some market participants do not have an EIC code at all. For instance, this could be the case when a market participant is counterparty to a physically delivered contract, but the delivery is done via another counterparty as scheduling agent.

b. In case the introduction of all EIC codes used for reporting by a market participants (see previous question) is allowed by the European register, the Registration Format could be expanded to:

- **identify the name of the object to which the EIC code relates (e.g.: name of the power plant),**
- **identify the address of the object to which the EIC code relates (e.g. location of a power plant identified by X EIC code),**
- **identify the country where the market participant or the object is physically registered (e.g. in case of Y, T EIC codes, all countries which lie in the area of the Y, T EIC code,**
- **identify the market participant's role/relationship with the submitted EIC codes in order to differentiate situations where one code is used by more than one market participant. The Agency has identified the following relevant roles:**
 - o **Proprietor/owner of the object to which the entered EIC code relates**
 - o **Operator of the object to which the EIC code relates**
 - o **Other role which has information about the object to which EIC code relates**
 - i. **Do you agree with the possibility to add these mandatory fields in order to identify each EIC code? If not, please justify your reply.**
 - ii. **Would you like to add/reformulate any other potential role/relationship of a market participant with the submitted EIC codes to the ones mentioned in the list above?**

We see no added value in listing all power plants, locations of these power plants, role of the market participant, etc., in the market participant registration format. It makes the registration process unnecessarily burdensome. We strongly recommend not to add other EIC codes as mandatory fields.

3. Field 116 (Global Location Number of the market participant - 'GS1' in the coding scheme) is rarely used by market participants. Do you agree that this field is removed from the European Register? Please explain your reply.

We agree that the field is, indeed, rarely used and that it can be removed.

4. Field 118 ('Trade Register') was requested by some NRAs. Would it be adequate to allow for special characters in this field? If not, please justify your reply.

It might be added if the data field is not made mandatory. One should appreciate the difference between registration in the trade register and registration as market participant. For REMIT purposes, knowing the trade register of the market participant is not needed. This information is also publicly available through official, governmental websites.

- 5. The Implementing Regulation lays down the provision to include Trader IDs in transaction reports (field 3 of Table 1 in the Annex to the Implementing Regulation). The Trader ID is the login username or trading account of the trader and/or the market participant or counterparty as specified by the technical system of the organised market place. The field ‘Trader IDs’ may be added to the European Register as part of the market participant’s registration information to make it easier to link different trader IDs to one specific market participant for market monitoring purposes. Do you agree with this proposal and what are the pros and cons of this? Please explain your reply.**

No. We strongly oppose the inclusion of non-static data in the market participant registration form. Such information may be subject to frequent changes, which would require frequent updates to the registration form. From an operational perspective, this is highly burdensome and there is a risk that information will not be kept sufficiently up to date in case too many changes are required. This would cause greater confusion and uncertainty, as people often change companies.

Additionally, the current system is not very user-friendly and not flexible enough for the frequent introduction of changes. Currently, only one change can be made at a time and regulators’ approval is required before the next change can be introduced in the system.

We do not see the benefit of adding such information, considering that the Trader ID is a reportable data field for standard contracts. This should be sufficient as it will link a trader ID to a specific market participant and a specific trade. Also given that trader ID is provided in the transaction report along with a company’s data, we do not see any value in having the trader ID in the company’s register.

- 6. Field 120 (‘Publication Inside Information’) is currently filled by many market participants with a general link (for example, a link to the company’s main webpage) and not with the exact location where the inside information publications are published. Do you agree to refine its definition so that it is clearly stated that the URL(s) should indicate the exact address where the inside information is disclosed publicly and, to create a new field indicating the location of the web-feed used for reporting the publications of inside information to ACER?**

We agree that field 120 (publication inside information) should be redefined, so that it is clear that the URL of the exact address of the inside information platform should be mentioned. We are not in favor of creating an additional new field indicating the location of web-feeds, as the subscription to web feeds is mostly a one-off action and usually also clearly indicated on the inside information platform.

Also, this field should be complemented with another conditional field, for example, “Is your company owner of assets and potentially originator of inside information: YES or NO. If the answer is NO, there should be no requirement to provide any link. The reason for this is that trading companies (not owing any asset) are obliged to put a link even if they will never publish any information.

7. Regarding field 121 ('ACER code'), taking into consideration the need to ensure the traceability of relevant changes in the registration records² two new fields could be added to the Registration Format: one indicating previously used ACER codes; another identifying the relationship with the previous codes. The identification of the relationship between ACER codes could be provided by selecting the following types:

- same person previously registered in another Member State;
- incorporation of a registered market participant;
- spin-off from a registered market participant;
- other.
 - i. Do you agree with the above proposal? Please give reasons for your answer.
 - ii. Do you see a more efficient way to ensure traceability of relevant changes in the registration records?

We agree with the creation of a new data field to indicate previous ACER codes, but we do not see value in a data field for identifying the relationship between ACER codes.

Further in relation to the use of ACER codes, both in notification emails and in the system, Market Participants are only defined by their ACER codes. It would be of great help, if the market participants are also mentioned by the corresponding name.

8. Section 4 ('Corporate Structure' of the market participant) does not currently provide full transparency on the corporate structure of the market participant. It has been proposed that every market participant registered indicates the VAT number, name, and percentage of ownership of all companies belonging to the same group³ of the market participant (including company(ies) that are not market participants) as this would increase transparency from a market surveillance perspective.

- i. What are the pros and cons of such an approach? Please explain your reply.
- ii. Are there any improvements more generally to the corporate relationship section you would suggest?

The suggested increase of registration in respect of corporate structures will add substantially to the administrative burden, but it will not provide benefits in terms of surveillance, considering that many companies within a Market Participant's group may not have much, if anything, to do with wholesales energy markets.

The proposal of including names, VAT numbers and percentages of all group companies is very complex, burdensome and operationally not manageable, as the corporate structure of a group is dynamic (change of ownership percentages, etc.) and may be very complex. This is particularly true for large international groups with over 100 group entities.

² e.g. de-registration of a market participant in one Member State and registration of the same market participant in another Member State, incorporation of an existing market participant by a new market participant, spin-off from a registered market participant resulting in new market participant(s).

³ In order to limit the administrative burden on market participants the same corporate structure does not have to be entered by every market participant belonging to the same group.

We believe that requiring full transparency on the corporate structure of a group (including information on group entities that are not market participants) goes beyond the intention of the legislation, does not contribute to more integrity and/or transparency on wholesale energy markets and it would go beyond what is currently required for other registrations (such as with the trade register, LEI application, etc.). As such, we strongly oppose such a requirement.

The registration of market participants should be a straightforward process, requiring only essential data which enables regulators to identify properly the market participant without including dynamic data that requires frequent updates and leads to an operational burdensome and costly a process to keep the registration forms updated.

We believe that it should be clarified that the ultimate controller should be only the ultimate mother company/ies (in case of joint venture), and not other group companies.

Finally, it shall be noted as a problem that it is not possible to reject a registration from another Market Participant (e.g. an external investor) as an ORU (Other Related Undertaking). This is not very reassuring and means that a market participant cannot reject the relationship even though the registered information may be wrong. Notification emails should be sent to the users clearly stating that action is required (to accept/ reject any corporate links) and it would also be useful if a reminder email is sent to the user after 30 days if a link is not accepted/ rejected.

9. In Section 3 to 5, we understand that some fields may not be self-explanatory. In order to avoid the misinterpretation of the information inserted by a market participant, do you think that some additional free text fields should be included to allow a better description of the particular situation of the market participant? Namely regarding:

- **the main activity of the market participant;**
- **how the ultimate controller performs such control;**
- **information about the existing/envisaged data reporting agreements.**

Although we recommend not to include free text boxes, if any of these are included, they should not be mandatory. In fact, the a.m. examples are additional reporting requirement rather than of explanatory nature; we do not see the need to have them included.

10. Do you have any other comment on the current fields provided in Annex 1 to ACER Decision 01/2012 on the Registration Format that can further improve the functioning and usefulness of the European register of market participants?

- a. We would recommend limiting the requested information in relation to the natural persons linked to the market participant. We believe it is sufficient to request only one point of contact for any communication regarding REMIT registration, inquiries or others and see little value in requiring data regarding the natural person responsible for trading and operational decisions. It should also be noted that within market participants there is often not one ultimate person responsible for trading or operational decisions, but a co-decision, and the composition of these teams may change. Additionally, having to notify only one single point of contact towards the regulators for REMIT-related queries facilitates the internal*

compliance set up within market participants. The less centralised the requests sent to a market participant, the higher the risk that no prompt or adequate actions is taken.

- b. We recommend to simplify the information requested under corporate structure and clearly mention that the ultimate controller should be the mother company of the group of companies, or shareholders in case of a joint venture.*
- c. We have experienced errors concerning the indication of the RRM, which have triggered the registration process of the indicated (other) market participant as RRM. This is not reassuring considering that the indicated other market participant does not have the possibility to approve or confirm the starting of the process to become RRM.*

Questions on the functioning and usefulness of the European Register

Recital 21 of REMIT provides that in line with the reports submitted by the Agency to the European Commission, the Commission should assess in cooperation with the Agency and with the NRAs, the functioning and usefulness of the European register of market participants, including whether any regulatory changes related to this are needed. In this section the Agency is keen to understand if stakeholders have views on any changes needed in the context of the Register that in the long term can enhance the overall transparency and integrity of wholesale energy markets and ensure a Union-wide level playing field for market participants.

11. In 2011, the Council of European Energy Regulators (CEER) issued a report⁴ recommending factors that are important in meeting the above aims. The current Registration regime was introduced, as it was considered that it provides the right regulatory balance to identify who is in the market and to enable monitoring markets to detect abuse. The Agency is keen to understand stakeholders' views on this balance, in particular in relation to the previously-raised concerns that different national administrative requirements, which trading companies need to meet in order to operate in the national wholesale energy markets, could represent potential barriers to the creation of a Union-wide level playing field for market participants.

- i. Do you consider these national administrative requirements a relevant barrier to entry and an obstacle towards a true pan-European energy market? Please provide examples of administrative requirements that you believe constitute an unjustified barrier to entry that could distort the level playing field at European level.**
- ii. If you do believe there are barriers to entry, how could these be mitigated?**
- iii. Do you consider other possible regimes, compared to the existing registration regime, more useful to enhance the overall transparency and integrity of the wholesale energy markets and ensure a Union-wide level playing field for market participants? (e.g. EU trading license regime)**

The NRAs have developed different rules around their national market participant registers which increases the burden to make and maintain the market participant registrations. Examples of such national differences are (i) the German NRA will only allow 1 person to have access to register on behalf of a market participant and have very specific requirements for the power of attorneys to be made to document the

⁴ See CEER Conclusions Paper (C11-WMS-15-04b) of 8 November 2011 - CEER Final Advice on the Introduction of a Europe-wide Energy Wholesale Trading Passport.

person's power to register on behalf of the market participant. This makes it quite difficult to comply with the requirement for maintenance of registered information, if the person holding the power of attorney and the access to register is sick, on holiday or the like; (ii) the German NRA has only published registration guidelines in German, which makes it quite difficult for non-German speaking companies to find out what the specific German requirements for registration are. It would be preferable and a welcome way to ease the very large administrative burden that the registration of market participants is, if all NRAs had the same requirements.

Also, with regards to the level playing field, it is important to indicate that in some jurisdictions REMIT requirements are not fully aligned with national requirements. Some of the jurisdictions, in particular in Central Eastern Europe (Poland, Czech, Hungary, Romania, Bulgaria, Croatia, etc.) have in place burdensome licensing requirements for wholesale traders. In addition, in those countries, in particular in Romania, Hungary and Poland, there are significant reporting requirements which bring into question the level playing field for all wholesale trading firms that operate in different EU markets.

We believe that with REMIT in place NRAs have all the means to monitor the market and to take actions against any entity that operates within their jurisdiction.

- 12. Some counterparties and organised market places (OMPs) voluntarily require market participants to be registered in the European register of market participants before they can trade with them/in their platforms. Do you consider that the introduction of this as a legal requirement would benefit the integrity and transparency of the wholesale energy markets? What would be the pros and cons of introducing this legal obligation?**

We believe that such requirements already exists in REMIT level 1 text as one should be registered as market participant in one Member State prior to entering into reportable transactions, in order to be compliant with REMIT obligations and do not believe that any further requirements should be imposed. It is the responsibility of each market participants to be compliant with its respective REMIT obligations. A formal obligation may be acceptable only if the registration replaces, where existing, any national licensing requirement for wholesale energy trading.

- 13. Do you find the publicly available extracts of the European register of market participants useful for your business and/or for the transparency of the wholesale energy market? If not, which additional information should be published?**

Yes, the public extract of ERMP is useful. All necessary information can be found. However the registration date should also be added. It is our understanding that the date of validity shows the latest update and not the actual registration date.

We recommend avoiding publishing generic/personal email addresses to avoid email spamming issues.

- 14. Do you have any other comments on the functioning and usefulness of the European Register?**

- a. *One of the main issues that need to be addressed is the limited user-friendliness to make changes to existing registrations.*

- One is only allowed to make one change per log in, requiring regulators' validation prior to being able to execute a second change. This is very time-consuming and not flexible in case multiple changes need to be made. The more "non-static" data ACER wants to add to the registration format (which we clearly discourage), the more this will render the process burdensome from an operational perspective.
 - From time to time, market participants are locked as "Read only" for long periods of time after updates (i.e. no updates or registration of corporate structures can be made in respect of such market participant). We have experienced periods from a couple of months up to about 9-10 months of a market participant being locked. This makes it very difficult for us to live up to the requirement that the registered data should be updated as soon as changes occur;
 - In relation to the updates of registrations of market participants registered with the Danish NRA: the Danish NRA must approve every single submission for an update or a corporate structure relationship registration, which makes the registration process very time-consuming (this is e.g. not the case in Germany, Sweden or the UK).
- b. When a new market participant is registered, the information submitted in the draft under Section 4: Corporate Structure Information is to a large extent lost (sometimes parent/controlled undertaking relationships are accepted, but it does not seem to be consistent). This means that the information must be submitted again for every single corporate structure relationship when the registration has been approved. It would be helpful if this could be changed so that the information of the corporate structure is retained.
- c. System Functionality- The user experience of the system could be improved by several updates to the system capability including:
- **Notification Email/ System Formatting** - The format of the notification emails of ACER could be improved by including the market participant's name alongside the ACER code and adding further details such as the "type of relationship" for updates to corporate structure. Across the system, market participants are only defined by their ACER code, it would be helpful to include the market participant's name alongside each reference to the ACER code. In Section 5 it would be helpful if, together with the ACER Code, the name of the RRM is also included.
 - **Export Facility**- We consider that the existing export facility of the system (showing historical changes) could be improved across several areas, this would enhance the market participant's ability to review the registered data on an ongoing basis and to adhere to the obligation to keep this data up-to-date (in accordance with Article 9(5)):
 - Each section of the registration for an individual market participant could be exported to excel as a single section showing the current data only. In addition, all 5 sections could be exported collectively to give a view of all of the data currently registered for each Market Participant.

- *All sections of the registration for all market participant that a user has access to could be collectively exported to one excel to show current data across all market participants.*
- **Search Facility-** *In the “Search” box in Section 4 it would be useful to be able to include the name of a market participant and see if they are linked, e.g. go into MP X in section 4 and type “MP Y” and see if they are linked already. This would be particularly useful for a global organisation with a significant amount of corporate relationships.*
- d. *The registration of market participants is neither easy nor intuitive. Most of the agents who do not belong to a large business group find it difficult to complete the registration procedure (which poses a barrier to entry for smaller market participants) and there are many who certainly would not have had the ACER code before April 7. The fact that a counterparty does not have an ACER code also impacts the counterparty already registered, which will be unable to report.*

Question on the implementation timeline of changes in the European Register

- 15. Following consideration of responses to the public consultation, the Agency aims for any resulting modification to the European register of market participants and to the Registration Format to be adopted by 30 June 2016 and to apply as of 1 January 2017. Do you agree with this proposed timeline? If not, please justify your reply and propose an alternative timeline.**

Depending on the changes proposed to the registration format, an implementation period of 6-9 months should be foreseen.