

EFET comments on REMIT Implementing Rules Response to DG ENER Consultation

The European Federation of Energy Traders (EFET)¹ welcomes the opportunity to comment on the latest draft of the Implementing Acts of the Regulation on Wholesale Energy Markets Integrity and Transparency (REMIT) offered by the Directorate-General for Energy of the European Commission. In principle, we support the draft text, but we have some remaining concerns and hope that they will be addressed in advance of the forthcoming Comitology process.

General concerns

As an overall objective, we encourage the Commission to align the reporting requirements under REMIT with the existing reporting requirements under Regulation 648/2012 (European Market Infrastructure Regulation, EMIR) and under the Commission Delegated Regulation (EU) No 148/2013 entering into force in February 2014. The objective should be to minimise the administrative burden and implementation costs for market participants, which should be a common goal both for the Agency for the Cooperation of Energy Regulators (ACER) and for the European Securities and Markets Authority (ESMA).

Timing, scope and mode

EFET encourages a phased approach to the reporting requirements, with focus on standard transactions as a priority, because this will help to ensure orderly implementation. We also welcome the proposal of Article 5(1) to report the transaction records through the platform (for the avoidance of doubt, including non-MTF (multilateral trading facility) platforms or physical commodity exchanges, and TSOs in the case of balancing services and primary capacity auctions) where the transaction was concluded. All relevant transaction data are available in the respective IT system and a direct linkage to the trade repository/ACER data repository is cost efficient for the market participants as required in REMIT.

We also support the exclusion from reporting of intra-group transactions that are not concluded on organised market places (Article 3(4)(a)). However, we question the value of the requirement to register as a market participant when entering into intra-group transactions to make use of the exclusion, particularly in cases when these are the only wholesale energy product transactions entered into by an entity within the group, e.g. supplier of an integrated energy group. There is some circularity in exempting intra-group transactions from reporting obligations only if the entity is registered, while registration is in principle required only for those contracts that are reportable.

Data protection

Data security remains an important concern for market participants and recent hacking events in the databases of certain exchanges have shown that these fears are justified. Based on Article 12 of REMIT, we would urge ACER to issue a statement in due course before reporting

¹ 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 27 European countries. For more information, visit our website at www.efet.org.

commences. This statement should specify the level of data security that is adopted in relation to the data to be reported, including the process of accessing this data internally and sharing such data with National Regulatory Authorities (NRAs). It is essential that the industry can trust and rely on the quality and level of protection of commercially sensitive information ahead of reporting.

Suggested amendments

- In relation to Article 2(1)(b), the definition of ‘standardised contract’ is too broad. We would suggest the following revision: ‘wholesale energy products, which are *subject to central clearing*’. Moreover, in any form, subparagraph (b) is not alternative to subparagraph (a), but rather a subset. We suggest deleting Article 2(1)(b).
- Article 2(1)(c) suggests that contracts concluded under the EFET General Agreement should also be considered as standard contracts. However, a large part of wholesale energy deals are concluded under the EFET General Agreements, even those with non-standard features, which are covered by an extended confirmation including specific conditions and transaction features. It is not clear how such contracts are expected to be reported through the form in Annex I Table 2.1. ‘Standard reporting form’. We suggest deleting Article 2(1)(c).
- With respect to Article 3(5), when reporting standardised contracts ACER should allow the use of the same taxonomies that are used when reporting under EMIR. This would improve significantly the efficiency and cost-effectiveness of the process. In relation to Article 5(8), ACER should also align the electronic formats for submission of information with EMIR formats to minimise IT costs.
- In Articles 3(4) (b) and (c), the meaning of the term ‘single power generating facility’ should be clarified, as it is currently not clear whether this means one generator/turbine or an entire wind farm with several wind mills each of which produces e.g. 8 or 9 MW.
- Article 4(4) states that ACER will prepare a manual with details on what has to be reported. We would appreciate some clarity on the publication timeframe. The availability of detailed explanations is a prerequisite for setting up reporting systems that are consistent with the Regulation. Therefore, the Implementing Acts establishing transaction reporting should be adopted only after such essential information is made available. In this way, the six-month period granted by REMIT for the provision of data to ACER will be fully available to market participants.

In this regards, market participants would welcome clarification and guidance as regards the UTI numbers. Currently, it is not the market practice to identify a transaction between counterparties in terms of a unique identifier. The generation of such a number as part of a regulatory requirement will raise issues in terms of harmonisation and consistency among market participants.

- Article 6(1) indicates that transactions in standard contracts should be reported as soon as possible, but no later than the working day following the conclusion of the transaction. We understand ‘conclusion’ of the transaction to mean ‘once the transaction has been confirmed’. It would be useful to clarify whether this is actually the case. In any case, the interpretation of the reporting timelines under REMIT should be aligned with those under EMIR.
- EFET welcomes Article 6(2), which defines a one-month period for sending records of transactions in non-standardised contracts. We are also supportive of the decision to limit the reporting obligation for non-standard contracts to the non-standard reporting form and not to impose any additional regulatory requirements, e.g. requirement to provide digital copies of the contracts. This is reasonable considering the underlying manual process of such transactions, including the fact that such contracts, which are often lengthy and written in the national language of market participants, would not provide any immediate transparency to ACER. For the same reasons, modifications should also be reported within the same extended one-month period, instead of the proposed one-day period.
- In Annex I, fields 4 and 7 of Table 1 are identical. In Table 2.2, the terms ‘contract’ and ‘transaction’ are used inconsistently and would require further clarification. In practice, contract value, quantity and daily nomination for non-standard contracts can be variables (as opposed to fixed values). To take such features into consideration and to make reporting more transparent, we would recommend allowing ranges to be provided for fields 10,11 and 22.
- In view of the structure of the Tables in Annex I, EFET also recommends adding a column ‘Data Format’ covering the same level of detail as defined in the EMIR Implementing Technical Standards (ITS). A clear definition of ‘Data Format’ will contribute to the smooth implementation of the reporting requirements. It will mitigate the risk of unclear reporting, which could increase unnecessarily the IT costs for market participants or lead to the accumulation of incomplete information by ACER and NRAs.