

ESMA Consultation on Information Disclosure on Commodities under MAR

A EURELECTRIC response paper

May 2016

EURELECTRIC is the voice of the electricity industry in Europe.

We speak for more than 3,500 companies in power generation, distribution, and supply.

We Stand For:

Carbon-neutral electricity by 2050

We have committed to making Europe's electricity cleaner. To deliver, we need to make use of **all low-carbon technologies**: more renewables, but also clean coal and gas, and nuclear. Efficient electric technologies in **transport and buildings**, combined with the development of smart grids and a major push in **energy efficiency** play a key role in reducing fossil fuel consumption and making our electricity more sustainable.

Competitive electricity for our customers

We support well-functioning, distortion-free **energy and carbon markets as** the best way to produce electricity and reduce emissions cost-efficiently. Integrated EU-wide electricity and gas markets are also crucial to offer our customers the **full benefits of liberalisation**: they ensure the best use of generation resources, improve **security of supply**, allow full EU-wide competition, and increase **customer choice**.

Continent-wide electricity through a coherent European approach

Europe's energy and climate challenges can only be solved by **European – or even global – policies**, not incoherent national measures. Such policies should complement, not contradict each other: coherent and integrated approaches reduce costs. This will encourage **effective investment** to ensure a sustainable and reliable electricity supply for Europe's businesses and consumers.

EURELECTRIC. Electricity for Europe.

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Consultation questions

3.3.3 Examples of information directly relating to a spot commodity contract

37. With regards to information directly relating to a spot commodity contract, Recital 20 of MAR identifies two examples for which information is required/expected to be disclosed:

- a) in accordance with a European Regulation, namely Regulation (EU) No 1227/2011 (REMIT)¹⁴ for wholesale energy products (electricity and gas);
- b) as part of the voluntary joint initiative of many countries through the Joint Organisations Database Initiative (JODI) database for oil.

Wholesale energy products (electricity and gas)

38. With regards to wholesale energy products (electricity and gas), Article 2(1) of REMIT lists categories of information to be considered when considering the notion of inside information. ACER, in its guidance on the application of REMIT, has developed a section on the application of the definition of inside information under REMIT¹⁵.

39. With regard to information, REMIT refers to other European Regulations (No 714/2009 and No 715/2009) whereby there should be periodic and regular publication of data. REMIT information also relates to capacity and use of facilities for production, storage, consumption or transportation 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. Finally, Article 4(1) of REMIT requires market participants to disclose inside information in respect of business or facilities which the market participants concerned, or its parent undertaking or related undertaking, owns or controls or for whose operational matters that market participant or undertaking is responsible, either in whole or in part.

40. As a matter of example, in relation to the spot electricity market, it can also be referred to Regulation (EU) No 543/2013 on submission and publication of data in electricity markets whereby information on the generation, load, transmission and balancing data shall be published by the European Network of Transmission System Operators (ENTSO) for Electricity.

41. In some jurisdictions, there exist national requirements with regard to the energy markets for the disclosure of information relating to the auctions of spot markets (day auction, intraday auctions and balancing markets) within a certain delay (e.g. three months) after the day of delivery of power.

Oil related products and gas

42. The JODI database on oil makes publicly available statistical information about production, imports, exports, stocks, refinery intake and demand in relation to a 7 oil related products (e.g. crude oil, gasoline, kerosene). This database does not result from a legal or regulatory requirement but from the permanent commitment of JODI's participants, nearly 100 countries members of one of the 6 JODI partners organisations (APEC, EUROSTAT, GECF, IEA, OLADE, OPEC and UNSD), to provide on a regular basis monthly nationally validated data for central publication in the database. This database has operated since 2002. More details on the scope of the information made public can be found on <https://www.jodidata.org/oil/>.

43. It should be noted that JODI16 has recently launched a similar initiative for gas, the JODI database for gas. A permanent database is operating since May 2014, to which the members, 77 countries representing nearly 90% of the global natural gas supply and demand, commit to provide officially validated data on natural gas production, imports, exports, stocks and demand on a monthly basis. The JODI database for Gas was not in place when the MAR text was finalised. ESMA proposes to include it as another example of information expected to be disclosed.

44. ESMA also included in the proposed draft guidelines an additional example of information reasonably expected to be published. It relates to the news or press releases about the outcome of the conferences held by producing countries (e.g. OPEC) during which in particular production quantities by participating countries are discussed and agreed upon.

Question:

Q7: Can you think of other examples of information related to the infrastructures, storage facilities and transportation (e.g. pipeline)? Please specify.

Generally, we consider the examples as comprehensive.

In this context it is important for us to highlight that there is already a sector specific regulatory regime regarding the treatment of inside information and the provision of market abuse on electricity and gas markets in place (REMIT; Regulation No 1227/2011).

This Regulation covers spot and derivatives markets as well as both physical and financial products. Since 2011 there has been significant efforts made to implement detailed and robust disclosure procedures for energy companies, energy exchanges and energy brokers as well as on grid operators and consumers.

Therefore, we believe it is important that this is adequately recognised in MAR. Thus, the guidelines should explicitly mention that any relevant inside information that is already published under the REMIT arrangements should no longer be considered inside information under MAR. In order to avoid any double reporting, such inside information need only be disclosed via REMIT channels and not also via MAR publication channels. Please see section 3.3.3 of the Consultation Paper. If this overlap is not clarified by ESMA in the final guidelines it will put market actors in a very difficult position since the overlap would concern several instruments in the market and there would possibly be a significant addition to the amount of stock exchange publications.

ESMA guidelines on a non-exhaustive indicative list of information which is reasonably expected or is required to be disclosed in accordance with legal or regulatory provisions in Union or national law, market rules, contract, practice or custom, on the relevant commodity derivatives markets or spot markets under Regulation (EU) No 596/214

Examples of information directly relating to a spot commodity contract

7. Information required to be publicly disclosed under Regulation (EU) No 1227/2011 (REMIT)²¹ for wholesale energy products (electricity and gas), including inside information as required under Article 4(1) of REMIT

8. Information about the auctions in the spot markets for energy commodity contracts (day auction, intraday auctions and balancing markets) issued after the day of delivery of power in accordance with legal or regulatory provisions under national law or the rules or practices of the spot market in energy commodities.

9. Statistical information made publicly available in the Joint Organisations Database Initiative (JODI) database about production, imports, exports, stocks, refinery intake and demand in relation to seven oil related products (e.g. crude oil, gasoline, kerosene) and in the Joint Organisations Database Initiative (JODI) database for gas.

10. Official communications issued by conferences of oil related products producing countries when relating to decisions on production levels.

As outlined above, we are of the strong opinion that there should be no reporting requirements under MAR for market participants as regards insider information for gas and power markets that is already disclosed under REMIT.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability



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