EC stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets

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A EURELECTRIC Response paper

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EURELECTRIC Response to EC stakeholder consultation on the implementation of a data and transaction reporting framework for wholesale energy markets

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1. General Remarks

- EURELECTRIC represents the interest of the electricity industry at pan-European level and supports the objectives of REMIT to create an efficient and effective oversight framework for Europe's wholesale electricity and gas markets to improve their functioning, reflecting market fundamentals, and to help ensure that market outcomes are not distorted by abusive market behaviour.

- We appreciate that the European Commission understands that a balanced approach is necessary in defining reporting requirements under REMIT to ensure market integrity and at the same time minimize the impact on market participants in terms of operational burden.

  In this perspective, all data collection and reporting, including content, format, frequency and timing, must be directly related to the stated purpose of REMIT; i.e. allowing regulators to monitor potential market abuse. Therefore, any transactions (i.e. intragroup transactions, non-standardised contracts and orders to trade) that would do little to support the detection of market misbehaviour should be excluded from reporting. Furthermore, many electricity companies will most probably be subject to both EMIR (European Market Infrastructure Regulation) and REMIT. Given the subject complexity of the forthcoming obligations and in order to avoid any sort of duplication of reporting, the relevant regulatory authorities must define reporting requirements in the most coordinated way and allow an appropriate and aligned implementation period for non-financial companies. Market participants expect the European Commission, in cooperation with ACER and ESMA (European Securities and Markets Authority) to define rules guaranteeing that derivatives contracts reported under EMIR do not need to be reported again, are easily accessible to ACER and already comply with REMIT reporting requirements (for issues like content, format, timings and ID of market participants). Moreover, a clear distinction of the wholesale energy products to be reported under REMIT from those derivatives to be reported under EMIR would be helpful in order to provide clear guidance to energy market participants required to report transactions under several legislative requirements.

- Data collection for market monitoring is a critical activity; therefore the framework to be adopted should provide a high level of clarity for the market participants required to report, and guarantees that the data provided by the market participants cannot be used for any other purposes than monitoring of market abuse as defined by REMIT. Furthermore, EURELECTRIC stresses the necessity for ACER and any intermediate channels, used between the market participant and ACER, to ensure the highest standard for data security, data confidentiality of commercially sensitive data and reliability (i.e. with respect to timely and accurate reporting, etc).

- In view of the above mentioned principles:

    - Dedicating efforts and resources to the most relevant issues to be tackled, i.e. reporting of transactions in standard products is key to ensure a balanced and smooth process. Also for this reason we strongly oppose the proposal that reporting of non-standardised contracts should be accompanied by the provision to ACER of a copy of the same contract, as this can constitute commercially sensitive information and create an excessive burden to market participants. We may share ACER opinion that the contract may contain "information necessary when investigating possible market abuse"[1]. However, this information cannot provide any ex ante view on the possible adoption of abusive behaviours, so that we suggest that this contract is delivered only upon ACER request, when it has a suspicion of misbehaviour of market participants.

    - Platforms should be the primary source for collecting data on transactions concluded thereon, while market participants should retain the option to report transaction and fundamental data (both inside information and regulated information) themselves to ACER if they realize or consider that this is more appropriate or advantageous for them.

    - Any interim disposals, in absence of the creation of or reliable operation of external reporting channels/fora, at cost and responsibility of the market participants should be avoided at any time. Where such efforts have already been made in the past, these should remain a valid alternative under the implementing acts to comply with one's reporting and/or publication obligations under REMIT.

- EURELECTRIC believes that the requirements for transaction reporting should be implemented gradually and would thus recommend a phased approach (i.e. with a sufficient interval between the various periods) which allows for a sufficient testing period. This would be consistent with the proposal made by the consultants in the REMIT Technical Advice report. In this respect, the alignment with EMIR reporting requirements is essential for the effectiveness of a gradual implementation.

[1] ACER Recommendations to the European Commission as regards the records of wholesale energy market transactions according to REMIT (23 October 2012)

- Last but not least, any unnecessary burden and disproportionate costs on market participants must be avoided. Thus it seems essential that the European Commission and ACER have a clear communication policy towards possible national transaction reporting initiatives; if such initiatives are not consistent with REMIT and create undue duplication of duties upon market participants, they should be avoided/stopped.

2. Answers to specific questions

1. ***What, if any, verification of their capacity to effectively interact with ACER for the purposes of data transfer should be required of***
   a. ***market participants reporting transactions or***
   b. ***of third parties who report transactions on behalf of market participants?***

Considering that organised market places operators, as "persons professionally arranging transactions", are required by REMIT (art. 15) to establish and maintain effective arrangements and procedures to identify breaches of market abuse prohibitions, we expect that they will be endowed with an adequate register of transactions negotiated and executed on their platforms and that this register will presumably be consistent and aligned with data required by ACER. On the other side, market participants probably could not presently own a register with all the details equivalent to those required for the purposes of market monitoring and the effort required for them to adapt to such a detailed reporting system would be far larger than the effort supposed for platform operators.

For these reasons, we agree that organised market places operators should report data on platforms-transactions on a mandatory basis, provided that market participants are free to report directly, if they decide doing so. We believe that this option would reduce the overall cost for reporting and the burden on market participants.

We believe the Commission and ACER should further define responsibilities, particularly relevant in case of possible failure in delivering the data to ACER and/or the relevant NRA, where applicable, if the market participant opts to report through a RRM or a RIS. It should be for example expressly provided for that the compliance of a market participant with reporting obligations is considered fulfilled when a contract exists between the market participant and the third party stating that the third party is in charge of reporting on behalf of the market participant. Once the market participant has provided timely all necessary data to the RRM or the RIS reporting on its behalf, it should be explicitly released from any liability with respect to its reporting or publication obligations under REMIT. In any case, it should also be made clear that market participants on whose behalf data is reported remain owners of the data and must have access to the data, in order to be in a position to answer adequately any potential upcoming questions.

Market participants are directly involved in the transactions to be reported, therefore, for the purposes of their direct reporting to ACER, they should be required only to have in place sufficient technical capability consistent with the technical rules provided either by ACER or the entity that will assist ACER in establishing the data-base/trade repository in order to ensure operational reliability.

Market participants should be able to qualify as 'Certified Self-Reporting Party' if they have e.g.:

- Technical ability to report under the predefined REMIT data format, time limits, and frequency predefined in the implementing acts;
- Appropriate mechanisms for authenticating the data source and the data address e.g. using SSL-server certificates, acknowledge of reception of data and other techniques to ensure stronger authentication and access-control;
- Further requirements to ensure protection of data e.g. encrypted data using the common SSl, or similar, technique, using common hashing algorithms.

These requirements should be proven through a self-declaration of market participants, in case accompanied by proper documentation.

For third parties delegated to report transactions on behalf of market participants, further requirements should be introduced in order to manage the additional operational and legal risks. In particular, more stringent condition are needed to avoid false-reports, prevent misuse of information, ensure business continuity (also through the establishment of back-up facilities) and timely recovery of operations; moreover specific provisions should be set to ensure non-disclosure clauses and responsibility identification in case of failure to report or errors. This could be done via a respective approval by ACER. Finally, some specific requirements should also be introduced on employees involved in market monitoring and working with sensible data (both in exchanges/brokers and ACER or NRAs, such as control of personnel, duplication of servers, PCI DSS type of rules for security, authentication methods for logins…)

It is also important to bear in mind that reporting obligations should not create unnecessary costs for market participants and it should be avoided that third parties (RRMs or RIS) abuse their position by charging fees. In this perspective, we suggest the European Commission and ACER to monitor closely this issue to ensure that excessive fees are not charged on operators. In fact, we believe this should be free of charge since – as we mentioned above – they are supposed to arrange a register including similar information to that required by ACER for the purposes of market monitoring. The certification scheme should also be compliant with the system of Trade Repository under EMIR; thus such a TR could also be certified as RRM under REMIT.

2. ***What, if any, additional steps do you consider the Commission should take to ensure an effective interaction between transaction reporting under financial regulation and under REMIT?***

We support that reporting requirements under REMIT and under EMIR should be complementary and therefore the impact on market participants reporting should be minimized.

In this context the Commission may consider to require ACER and ESMA to clearly identify, on the one hand, wholesale energy products that should be reported directly under REMIT and, on the other side, derivatives to be reported under EMIR which would later be available to ACER for the purposes of market monitoring. This would provide clear guidance to market participants required to report transactions. In all events, the data fields reportable on derivatives under both EMIR and REMIT (and per definition under other present or future regulation) should be fully aligned so that the market participant fulfils its reporting obligation under both regulations by providing these data once to a registered trade repository or ESMA (ad interim), who shall further on provide the data to ACER. This would avoid that market participants have to report the same information twice.

Given that EMIR regulatory technical standards are not yet definitely approved, we urge DG Energy to cooperate with DG Market, in order to ensure that fields referred to energy commodity in EMIR reporting format exactly match with the fields required under REMIT, and that format, frequency, deadlines and implementation timing are consistent between the two regulations, so that ACER can simply acquire information from trade repositories reporting derivative contracts on wholesale energy products.

3. ***Do you agree that it is not appropriate to include a de minimis threshold for reporting standard transactions carried out using organised market places, brokers or trade matching facilities or which are cleared?***

EURELECTRIC believes that the definitions of a *de minimis* threshold would have to be balanced against the requirement of being able to identify the parties of the transaction according to Article 8 (1) of the Regulation; which will be more complicated if market participants executing non-reportable transactions are not subject to the registration obligation. We thus agree with the Commission's point of view that it is not appropriate to include a *de minimis* threshold for reporting standard transactions carried out using organised market places, since it cannot be excluded that markets may be manipulated by all market participants, regardless of their size, and/or volume of transaction and since these are supposedly reported by these organised market places (so that there would be no need to take away this responsibility from small renewable energy producers acting individually).

A threshold could be introduced only for pragmatic reasons to reduce the burden on market participants for non-standard contract deals of small size concluded bilaterally but not to discriminate between market participants.

Whilst we appreciate that the Commission would like to ensure the proportionality of obligations on market participants, we believe that the capabilities to report directly or through third parties standard transactions should be possible to achieve by all market participants.

4. ***Do you agree that the definition of "standard commodity transactions" and the creation of a white list for fully reportable transactions, as set out in the consultant's report, represents a suitable approach?***

We support the idea to establish a “white-list” of wholesale energy contracts to facilitate data collection under REMIT with a phased approach (whilst providing for a sufficient long period between the various phases) and we agree with the Commission that market abuse is more probable where standard contracts are used and that ACER should focus primarily its resources on ensuring that standard transactions are collected and monitored.

We believe that the white-list should be sufficiently clear to enable market participants or third delegated parties to identify without doubts which contracts must be reported to whom, when and in which format. Our understanding and expectation is that these contracts should be reported by market places where such transactions take place. We, however, underline that market participants also engage in standardized transactions out of organized market places. Given the fact that the transaction is executed out of an organized market, direct reporting from the market participant would be necessary in these cases if no other arrangements with service providers are developed, implying that the reporting responsibility directly pending on market participants may be disproportionate (in terms of deadlines and content). For this reason we urge the Commission to require the reporting of bilateral standard transactions in the long form only in a second phase of implementation.

In order to concentrate efforts and resources on the most relevant contracts in the initial phase of implementation, we believe that only contracts included in the white list should be reported. As a second step, other standard contracts included in the “grey-list” (such as suggested in the REMIT Technical Advice Report) should be reported in the “long form” after examination that it is possible to assign all attributes. Where it is not possible to assign all attributes, a reasonable degree of flexibility is required to permit market participants sufficient time to adapt their systems insofar as possible to comply with all the reporting field requirements. Adaptation of such systems must not place undue financial burden on market participants and the financial burden of such systems must not act as a deterrent to market entry particularly for smaller players. Where it appears that not all fields are relevant to the participant’s business, participants should be permitted to leave such fields blank. We believe that non-standard contracts should not be reported until the last phase and only in the short form (when the option of only requiring reporting upon request should be duly considered), but market participants should be responsible to maintain records, although not in a specific format.

In our view, the reporting of contracts pertaining to balancing markets should not, in principle, become mandatory and it certainly should be not be mandatory during a transitional period. Balancing markets are predominantly national and relatively isolated markets that are operated under non-harmonised and diverse rules. These contracts do not necessarily fit into the categorization suggested by the consultants and the Commission should take this specific category into account.

Finally we share the opinion that reporting of intragroup transactions should not be required and this regardless of whether both counterparties to such a transaction are registered under REMIT or not. The main purpose of intragroup deals is to allocate risks depending on the business models and the requirement to reporting of intragroup transactions would be more penalising for more complex groups.

5. ***In relation to transactions not covered by the "white list",***
   a. ***Do you agree that these transactions should be subject to reduced "short form" reporting requirements?***
   b. ***Should these transactions be reported at a defined interval or only upon request of ACER?***
   c. ***Should the frequency of "short form" reporting be related to the size of the market participant or the overall frequency or volume of trading in which it is engaged?***

a) We are of the opinion that transactions not covered by the “white list” should not be reported during the initial phase. This would ensure that the resources of ACER to collect data are addressed to the most relevant wholesale energy products for market monitoring purposes. Market participants should be required to maintain records, although not in a specific format, for all other transactions not reported. In a second phase also other standard contracts (i.e. included in the ‘grey list’) should be reported whether in the short or in the long form, depending on a previous assessment on the availability of reporting channels and data (please see also comments to answer 4 above). Non-standard contracts included in the grey and in the black-list should be required to be reported in the short-form only in an advanced/final stage and on longer term intervals, e.g. monthly (whether on a regular basis or only upon request). Any transaction which does not allow a delegation of reporting responsibility should be reported in the short form by the market participant(s) involved in it.

   In this respect, as already mentioned above, we also consider it not appropriate to request the market participant to submit a hard or soft copy of the non-standardized contract itself to ACER given that all relevant information should be covered in the short form reporting. Moreover as any change to initial price and/or quantity gives rise to a new transaction, this may lead to the obligation to repetitively upload these large contracts, creating unnecessary burden upon operational processes and systems capacity. A copy of these contracts will be available for insight to ACER at its simple request.

Contracts that are established in balancing markets should not also be reported. These contracts are mostly country-specific and it would be burdensome for market participants to comply with even short-term reporting specifications. Furthermore, the Balancing Network Code is not yet available and, as such, there is no pan-European operating reference against which balancing market contracts may be benchmarked. Market agents should be subject to record keeping obligations in order to be able to supply these contracts on request.

b) As expressed on several occasions in the past, we consider that non-standardized transactions should not be reported on a regular basis to ACER, but only upon explicit request from the Agency, as they would imply a burdensome reporting for market participants (often impossible to automate), impossible to delegate, and because of their little contribution to detection of market misbehaviours. Indeed there is a difference between standardised "white list" contracts traded on a organised market places, which are easier to report and could be reported daily by the platform, and non-standardised contracts, where a daily frequency is much more difficult, if not impossible, to achieve. In our view, non-standardised contracts in the "black list" should be reported on a monthly basis (consistently with ACER recommendations to the EC), as the reporting of these contracts, even in the short form, implies large administrative costs to market participants and should happen only in a more advanced implementation phase of the reporting requirements. The obligation to maintain records should be sufficient to meet possible requirements of ACER to report these contracts separately. Upon request of ACER, sufficient time should be provided to market participants to report transactions in any specific format.

c) No, we do not believe that the size of the market participants or the frequency or volume of trading should be relevant to collect data necessary to detect market abuses. See also our answer to question 3.

6. Do you agree that the definition of wholesale energy products extends to contracts relating to LNG and storage, including landing and storage capacity?

The definition of wholesale energy products should include contracts relating to LNG, only for LNG storage and landing capacity in the EU and they should not include contracts related to the commodity underlying LNG, since their scope is wider than the EU. Indeed, the mapping of gas flows and contracts from and to LNG production facilities, in addition to data on storage and landing provides a good overview of the LNG market.

7. ***Do you agree that generator connection agreements are normally a fundamental data item and not a contract relating to transmission?***

We do not believe that generator connection agreements are relevant for transaction reporting, i.e. it is not a contract relating to transmission as it is no wholesale energy market product and it brings no added value to monitoring the market for abusive behaviour. Furthermore, fundamental data reportable under REMIT should not go beyond the information to be reported to a TSO or other platform under applicable transparency regulation and related guidelines and/or network codes. For the above reasons, we believe that information on generator connection agreement should be excluded from the scope of REMIT reporting.

8. ***Do you agree that where one of the parties to a transaction organises the market place, that party should have sole responsibility for reporting the transaction?***

We believe that organised market places operators' should be the primary source for data collection of transactions concluded thereof, though, at the same time, market participants should also retain the option to report directly transactions.

Nevertheless in case operators of organised market places have the exclusive right to manage a certain market, the service to report transactions on behalf of market participants should be regulated, not provided on a commercial basis (i.e. meaning free of charge or cost based), and the market participant should be relieved from any liability for defaulting reporting by the third party.

Concerning this question and the following No.9, we would like to emphasise that organised market places should not be regarded as “one of the parties to a transaction”, as they are only the platform of execution of transactions between “two or more parties” and they do not usually act as counterparty in a transaction. We consider it more appropriate the use of REMIT reference of “persons professionally arranging transactions”.

9. ***Do you agree that where neither party to a transaction organises the market place, that both parties should separately remain responsible for reporting the transaction?***

Concerning transactions agreed and executed on a pure bilateral basis, we agree that no one of the counterparties should be identified a priori as responsible for reporting. However, we don’t agree with the proposal that both parties should always remain responsible for reporting, if there is a system in place (see the Italian case with GME orders confirmation in the platform PCE) allowing reporting from only one counterparty and simple ratification (which should then be mandatory) of the other counterparty. However, it is reasonable to allow parties the option for both to be responsible for reporting if that is favourable for the parties in question.

10. ***Do you agree that daily reporting of transaction is the most appropriate frequency to allow ACER to effectively monitor wholesale energy markets?***

An effective market monitoring can be guaranteed if the frequency of reporting is from daily (i.e. d+1) to weekly. Compared to the idea of immediate reporting, this solution would guarantee a balance between ACER necessity to rapidly access information and the costs of reporting for market participants. See also our answer to question 11.

11. ***Do you consider it would be possible for market participants to report their transactions on a daily basis?***

We agree that daily reporting (this means D+1 or D+2) of standard transactions is mostly achievable by market participants in the sense that it is the maximum effort that can be produced without involving deep process restructuring and relevant investments. Daily reporting will however remain sufficiently challenging for smaller market participants which may not have the required IT infrastructure and other resources in place for complying with this frequency. Additionally errors in such high frequency reports can be more probable compared with weekly or monthly reports.

We understand that active monitoring of markets requires timely access to market data for ACER, however the current standards are far less demanding. Most of the transaction reporting obligations we face in some national markets require hourly or daily granularity, but they are usually required on a monthly basis.

In this respect we suggest the Commission and ACER to consider the possibility to test initially transaction reporting on weekly or monthly basis with the aim to move to daily (i.e. D+1 after the end-of-day process has been run) reporting as soon as some key parameters (e.g. number of errors below a certain threshold) are met. As an alternative, the frequency of REMIT reporting should be aligned with at least the usual timing for confirmations in the market, which can often require several days. We think this is also consistent with the consultants' considerations on the existence of a trade-off between real time reporting and data quality and on the fact that a larger timing for reporting could allow a reduced necessity of reporting several lifecycle events, thus implying a relative reduction of the reporting burden on market participants and reporting service providers.

12. Do you agree that reporting of orders to trade (bids) should not be collected by ACER from market participants, other than organised market places, at least initially?

Orders to trade are very difficult to capture and the investments required to enable this functionality would not be balanced by the benefits of comprehensive monitoring. In this context, we agree that orders to trade should be collected by ACER only and in any phase through organised market places, though we are not aware of the capabilities of organised market places to provide this information. Currently many market participants are not able to record 'orders to trade' based on the current standard technology and, depending on the scope of the definition of 'order to trade', considerable investments would be needed to enable orders' recording and reporting. That is why we believe that this burden cannot be put on market participants, so that: (i) orders should always (and not only in an initial phase) be collected from organized market places and (ii) orders to trade in OTC market should not be reported at all. If or when the reporting of orders to trade becomes mandatory at a certain implementation phase, we concur with ACER's recommendation to limit the scope to orders to those which are visible to more than the potential buyer and potential seller and to orders related to products on an organised market.

In this regard, we would like to emphasize that reporting of orders to trade is not required under EMIR, so that, in the absence of a clear statement by the Commission, market participants would be required to directly report all their orders on derivative products. We urge the Commission to adopt measures that allow (or impose) reporting of such orders by market places arranging derivative transactions on wholesale energy products.

13. For which stages in the lifecycle do you consider that it is necessary to collect transaction data?

We believe that the most important stage to be reported is the 'contract stage', in order to capture concluded transactions. Execution of contracts concluded is as well relevant (i.e. scheduling and nominations), however the 'order' stage needs to be further clarified in order to avoid that the efforts and costs required are disproportionate compared with the expected benefits of comprehensive monitoring activity. See also previous response.

As the consultants have remarked in their report for ACER, trading venues, exchanges and brokers do not always already possess all necessary information for lifecycle reporting, so that reporting responsibility would directly fall upon market participants and delegation would practically be impossible. For this reason, we suggest that such lifecycle events are kept out of the scope of reporting in the first phase and their reporting is activated only when organized market places operators are proved to have access to them. As another alternative, ACER could get those information from the TSOs. When physical flows are nominated and shipped through transportation networks, the TSOs are obviously informed.

14. ***Do you agree that it is appropriate to develop a specific standard product taxonomy for reporting transaction data to ACER?***

We agree that it is appropriate to develop a specific standard product taxonomy for reporting transaction data to ACER, however we recommend that possible overlaps with similar reporting regimes (e.g. EMIR) are clarified in order to avoid duplication of implementation efforts or incompatible reporting regimes. Ideally, ACER and ESMA should agree on one single format.

15. ***Do you consider the items reportable under the draft electricity transparency rules envisaged by the Commission's consultation mentioned above sufficient for monitoring with regard to electricity fundamental data and which reporting channel(s) would you consider appropriate?***

We believe that the Fundamental Electricity Data Transparency Guidelines are the necessary base for developing reporting requirements under article 8(5) of REMIT. Hence, their adoption is necessary to clarify further issues related to transparency of fundamental data to be made available to all market participants.

The guidelines will play a major role for a concrete application of the REMIT framework and it is our view that the items required to be reported under these are sufficient for monitoring electricity fundamental data and that the reporting under the Guidelines and under REMIT need to be absolutely consistent in term of timing, format and detail of information delivered

Reporting of fundamental data should be primarily built on existing transparency platforms managed by PXs or TSOs. An additional central access to platforms run by ENTSO-E may be helpful, (i.e. with ENTSO-E having access to these existing platforms), however it is crucial that a clear deadline is set for the complete implementation of the transparency requirements.

Finally, we agree with the consultants' consideration that due attention must be paid when defining which of these data are expected to be published and which must remain confidential, at least until they no longer constitute sensible information.

16. ***What gaps do you consider to exist in relation to fundamental data related to gas, and can this be accessed without the creation of a framework for gas equivalent to that envisaged for electricity and which reporting channel(s) would you consider appropriate?***

We favour the establishment of a transparency framework for gas and electricity markets based on the same principles. We are convinced that a transparency framework which includes provisions to disclose data should be established to ensure transparency and market integrity in the energy market to the extent required to meet REMIT objectives.

The most part of the existing binding requirements are generally fine with our expectations, however clear compliance with existing rules is the primary concern in relation to fundamental data related to gas- and, to a limited extent, also electricity-transmission networks. In particular, concerning gas some progress has been made in making information available to the public although we still experience relevant shortcomings. One main reason for frequent lack of transparency is that not all data are available in English language. Furthermore actual flows on transportation systems are often not made available and it is not always possible to download raw data from websites; also, possibilities for queries for past periods are limited.

For instance, the current transparency platform (http://www.gas-roads.eu/) represents a valuable starting point, however it does not include the relevant information for all European TSOs and it suffers of some technical problems and lack of flexibility in possible queries.

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