



ACER Consultation on the ACER Guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services

The EDF Group Response

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General remarks

EDF Group welcomes ACER's public consultation on Guidelines for the Registration of RRM and RIS which will both have a crucial role to play in reporting transactions and publishing inside information thus ensuring the effectiveness of REMIT. It is of our opinion that these Guidelines should also address two critical issues related to (i) the opportunity to have a separate registration of market participants reporting transaction and/or regulated information on their own and (ii) the definition of clear legal and contractual guarantees for market participants vis-à-vis RRM and RIS if they choose to delegate their obligations to third parties.

In its Recommendations of October 23rd 2012, ACER highlighted that market participants willing to report transactions and/or regulated information to ACER should be registered as RRM and/or RIS. Therefore, we understand that the current guidelines can be applicable to all the operators planning to become RRM or RIS regardless of the fact they report transactions and/or regulated information (i) only on their own or (ii) on behalf of other market participants.

As a general comment, we believe that a clear distinction should be drawn between (i) market participants reporting transactions and/or regulated information and (ii) third parties who report transactions and/or regulated information on behalf of market participants. Any market participant who wants to directly report to ACER would be allowed to do so. In that respect, we expect a lighter certification process for "self-reporting" market participants which will aim at assessing if their technical and organizational requirements are compliant with the rules defined by ACER for a safe, reliable and well-functioning transfer of data.

ACER itself proposed in the aforementioned Recommendations (Recommendation n. 10) to keep separate registration of market participants from other companies acting as RIS for the reporting of regulated information. In our opinion, the same reasoning should be applied also to RRM since the envisaged registration procedure seems to be excessively burdensome to operators which do not handle data of third parties. Moreover, according to the "REMIT Technical Advice" issued by the EU Commission's consultants (PWC and Ponton) a distinction between third parties offering reporting services and market participants reporting on their own should be reflected in the registration requirements and process, e.g. through the establishment of a separate category of "Certified Self-Reporting Party".



Furthermore, EDF Group is surprised that these Guidelines do not adequately address the issue of liability of RRM and RIS in case of (i) technical failure of their reporting systems, (ii) possible breaches of the security measures, (iii) reporting of erroneous transaction or data, (iv) non reporting or non publication of transaction or data. As regards RRM, article 8(1) of REMIT clearly states that *"once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4 [among which are RRM and RIS], the reporting obligation on the market participant in question shall be considered to be fulfilled"*. Thus, EDF Group believes that market participants should be able to rely on a clear contractual framework aimed defining the responsibility of the service provider. The same reasoning should be applied to RIS, especially when they are required to report disaggregated data which are not made public on any platform. The market participants should also be in a position to rely on control mechanisms of what and how the transactions and data are reported.

Therefore, we believe that ACER should carefully assess the ability of candidate RRM and RIS to provide the necessary legal and contractual guarantees to market participants so that they can be considered having met their reporting obligations once the information is successfully received by the RRM and RIS, while data security and integrity is adequately ensured. This is of utmost importance given that market participants are exposed to very high penalties if they do not meet their reporting obligation.

We finally would like to point out that if REMIT provides some elements regarding the respecting responsibility of market participants and service providers for data collection, there is today no framework given at European level (neither in REMIT nor in ACER Guidance) to define the role and responsibility between market participants and centralized platform set up for publication (which will probably become RIS) that are currently promoted. This could certainly hinder the development of such platforms.

General questions

- 1. The registration process for both Registered Reporting Mechanisms and Regulated Information Services comprises two stages: Firstly, the Agency will review a written application, and if appropriate make a provisional registration (pre-registration of the applicant); secondly, the Agency will make a final registration subject to successful integration with the Agency's technology as described in the Agency's „Technical Specifications for Registered Reporting Mechanisms and Regulated Information Services“ document. For reasons of operational reliability, the technical specifications document will be kept confidential and applicants will have to sign a non-disclosure agreement before receiving a copy of the technical specifications document. This is a best practice applied by national financial regulators under EU financial market rules which the Agency also intends to apply for REMIT purposes. Please indicate your views on the proposed approach for the registration process.*

We agree with the two-steps registration process envisaged by ACER since we deem necessary that RRM and RIS must comply with the organizational and technical requirements needed to ensure data confidentiality and system security. This primary check can be carried out through an accurate



evaluation of the applications received by candidate RRM and RIS with the possibility to require additional information when relevant. RRM and RIS should also be fully integrated with the ACER's technology in order to safely and effectively transfer data to the Agency as from the official registration in the RRM and RIS list.

Nevertheless, the confidentiality of "Technical Specifications for RRM and RIS" as envisaged in these Guidelines does not seem to be adequately justified compared to the advantages of the publication of these technical specifications in terms of transparency and possible improvements through the extensive assessment (and possible consultation) of interested stakeholders.

We understand the need of the Agency to take enough time to assess the ability of candidate RRM and RIS to provide reporting services ensuring adequate safety and confidentiality standards. Nevertheless, we believe that ACER Guidelines should define the length of the registration process, e.g. by defining the maximum duration of the application assessment phase, in order to avoid undefined extensions which may be detrimental to market participants willing to delegate reporting services.

Finally corporate structures may change along with ownership. Both market participants and regulators will need to amend their assessment of the market when this happens. We would therefore ask if registration one-off? Is it periodically evaluated or can it be changed by market participants?

2. *According to the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER's consultants, it is currently considered that only Registered Reporting Mechanisms and Regulated Information Services with legal status in an EU Member State or an EEA country should be eligible to become a Registered Reporting Mechanism or Regulated Information Service. Please indicate your views on this suggestion.*

We agree on this position expressed by PWC and Ponton, since only RRM and RIS subject to the EU jurisdiction can provide the necessary guarantees for the provision of the reporting services under the conditions set out by REMIT and the subsequent implementation acts. We do however in this frame, want access to best value for money provided the technology works and the service quality, security and assurance performance is high.

3. *Do you have any general remarks on the draft RRM and or draft RIS Guidelines?*

Market Participants (some, or a representative group, at least) should be involved in the vendor selection, functional specification etc. This should avoid unrealistic specifications or implementation timetables and ensures the smooth running of the project as it will not work if the providers of information are not involved from the outset.



Questions concerning the draft RRM Guidelines

- 1. The aim of the Guidelines is to ensure operational reliability of the information received pursuant to Article 4(2) and Articles 8 and 10 of REMIT. Should Registered Reporting Mechanisms be required to have an ISO certification 27001 or similar to become a Registered Reporting Mechanisms as proposed in the REMIT Technical Advice for setting up a data reporting framework from June 2012 from DG ENER's consultants?*

The delegation of the transaction reporting obligation to RRM's will imply that market participants will report a significant amount of commercially sensitive information and/or information pertaining to trade secrets which will be potentially accessible to a large number of subjects (members of ACER and NRAs). For this reason, it is of paramount importance that market participants receive proper guarantees (legal, technical and organizational/procedural) regarding confidentiality and the reliability of data reported and security of the IT system being developed by ACER and RRM's reporting transactions on behalf of market participants. Thus, the obligation for RRM's to have an ISO certification 27001 or similar is fully justified by the need to ensure a reliable information security management system.

We do not believe that the same requirements should be imposed to self-reporting market participants.

- 2. The draft RRM Guidelines currently foresee a simplified registration procedure for trade repositories registered according to EMIR. Do you agree with this approach?*

The interoperability of the reporting systems established by ESMA and REMIT is necessary to avoid possible double reporting and to ensure an efficient implementation of both Regulations. For this reason we are in favour of ACER's proposal on a simplified RRM registration procedure for trade repositories registered under EMIR. The registration procedure envisaged by EMIR Technical Regulations¹ seems to be adequate to guarantee the organizational and operational reliability of Trade Repositories; nevertheless ACER should verify their compatibility with the REMIT trading reporting system. It would be preferable to develop the technical standards together. Moreover we consider of utmost importance that Trade Repositories acting as RRM's provide the necessary aforementioned legal and contractual guarantees to ensure the market participants' compliance with REMIT obligation.

¹ In particular the Commission Delegated Regulation n. 150/2013 of 19 December 2012 "Supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC derivatives, central counterparties and trade repositories with regard to regulatory technical standards specifying the details of the application for registration as a trade repository".



3. *Please express your views on the RRM criteria proposed.*

We generally agree with the RRM performance criteria proposed by ACER, even if we wish to reiterate that most of them are justifiable only for operators providing reporting services to third parties. Self-reporting market participants should be subject to lighter examinations which should focus on the compatibility with ACER's technical system.

We would also like to draw ACER's attention to some specific comments:

- **Back-up systems:** EDF Group believes that the Guidelines should provide further details on back-up facilities by defining specific requirements
- **Validation of input:** Although the function is already mentioned in point 1 (c) of the section 3 ("Application for registration as a RRM"), we suggest the addition among the RRM criteria of the quality check of the data received by market participants with the subsequent immediate request of re-transmission of erroneous data.
- **Validation of output:** RRM should provide certainty to market participants also on the exact timing when the information is sent to ACER in order to be fully accountable for the compliance with the reporting frequency as foreseen by the EU Commission in its implementing acts. Therefore, we suggest that the delivery receipt sent by the RRM to market participants be accompanied by a time stamp. EDF also considers that market participants should be able to check the effective data and transaction reported by the chosen RRM.
- **Notifications of a breach of its security measures:** RRM should notify also market participants using their services, not only the Agency, on possible breaches of their security measures which may cause unintended leakages or corruption of commercially sensitive information.

4. *Should Registered Reporting Mechanisms, for reasons of operational reliability, be required to support their annual reports, upon request and with at least 12 months' notice, by a recognised external auditor's report which confirms that the Registered Reporting Mechanism met all the criteria in the preceding 12 months?*

The operational reliability of RRM is of paramount importance to ensure the security of REMIT transaction reporting system and, consequently, the confidentiality and integrity of transactional data communicated on behalf of market participants. Therefore, the proposal to submit RRM annual report to an external auditor seems to be in line with the need to closely monitor the quality of the service provided.



Questions concerning the draft RIS Guidelines

1. *Do you agree with the three different types of Regulated Information Services proposed and the distinction made concerning their reporting of information?*

We generally agree on the need to centralize the publication of inside and transparency information on national, regional and European Platform in order to guarantee the widest possible availability of information to market participants

Nevertheless, we do not support the direct reporting of fundamental data or inside information to ACER when they are already published on publicly available websites. In our opinion, direct reporting of inside information, on top of disclosure under article 4(1) of REMIT, can imply significant additional costs for market participants or central platforms to develop information streams although they already exist. This practice does not seem to be in line with the provision of article 8(5) which calls for the minimization of reporting obligation by collecting the required information from existing sources where possible.

Moreover, we wish to underline that national transparency platforms for the publication of inside and transparency information have not yet been established in some European countries. In this particular case it is not clear whether market participants publishing inside and transparency information should be registered as RIS for direct reporting of fundamental data to ACER. As already highlighted in the general remarks a differentiated registration process should be envisaged for self-reporting market participants while the liabilities of RIS regarding the compliance of market participants on reporting obligations under REMIT should be clearly defined.

Besides the above comments, our understanding is that the scope of the reporting obligation is defined at article 8 (5) of REMIT. The information listed in this article corresponds to the one listed in article 2 (1) (b) REMIT. The scope of article 8 (5) of REMIT is then different from the one of the inside information and the other ones such as Regulation n°714/2009 and Regulation n°715/2009. Therefore, none of the platforms listed in the Guidelines are required to publish the exact scope of information mentioned in article 8 (5) of REMIT. EDF Group understands that ACER intends to widen the scope of information to be reported to all type of regulated information. The risk of double reporting or reporting failure is then very high. Indeed an information relating to the use of a production facilities could be considered as (a) a transparency information under Regulation 714/2009 to be published on the ENTSO-E platform and (b), in the same time, as an inside information having a significant impact on the wholesale market to be published on the REMIT national centralized platform. Therefore EDF Group asks for the clarification and definition of the scope of information targeted under article 8(5) of REMIT.



2. *Do you agree that ENTSO-E and –G transparency platforms should play a crucial role in the reporting of transparency information according to Regulations (EC) No 714/2009 and (EC) No 715/2009, including network codes and guidelines, and be treated differently than other information sources?*

We favour the establishment of centralized European transparency platforms by ENTSO-G and ENTSO-E as the most efficient tool to ensure the wide spread of data required according to the relevant European legislation. Since the ENTSOs, though only in the electricity sector so far, are required by law to make available all transparency data on a unique European platform, we agree on the opportunity for ACER to define on a bilateral basis the way information is made available. Nonetheless, it is worth repeating that direct reporting of publicly available information may impose undue burdens on market participants and platforms operators. Thus any arrangement proposed by ACER and the EU Commission should take in due account the costs imposed to the systems compared to the possible benefits in terms of market monitoring.

Those bilateral agreements should in any case be inspired by the procedural arrangement foreseen for RRM.s.

3. *Do you agree that it should be sufficient that inside information platforms make their information available to the Agency through web-feeds?*

Speed and reliability are of essence. The use of web-feeds to report inside information to the Agency can contribute to reducing, though not set to zero, the additional costs imposed to information platforms for the direct reporting of inside information to ACER. The use of web-feed would probably avoid more burdensome transmission procedures which could imply an increase of the fees imposed on market participants for the provision of the platform services.

4. *Do you agree that the technical specifications document should be the same for Regulated Information Services reporting individual and non-aggregated information than for Registered Reporting Mechanisms reporting confidential trade data due to the same sensitivity of the information?*

Since confidentiality and integrity of sensitive data should be protected by adequate technical, operational and organizational arrangements, we deem advisable to extend the requirements for RRM.s also to RIS reporting individual and non-aggregated information. This means that they should comply with the same criteria, obligations and notification requirements for RRM.s besides being integrated with the Agency's technology.

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