



ACER Consultation on the requirements for the registration of Registered Reporting Mechanisms (RRM)

The EDF Group Response

September 2, 2014

General remarks

EDF Group welcomes ACER's public consultation on the Requirements for the Registration of RRMs and the efforts made by the Agency to provide some clarifications. However, we would like to raise the following points that are of paramount importance for us:

- The EDF Group believes that the REMIT RRM requirements document needs to establish a clear distinction between (i) market participants reporting on their own and (ii) third parties reporting 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. We suggest ACER to consider the establishment of a separate category of "Certified Self-Reporting Party".
- As regards responsibility for reporting data, the EDF Group welcomes the clarification brought by ACER and notes that where the reporting is done by a third party on behalf of a market participant then "*the person [market participant] shall not be responsible for failures in the completeness, accuracy or timely submission of the data which are attributable to the third party. In those cases the third party shall be responsible for those failures.*" However, we do consider that asking a market participant to "*take reasonable steps to verify the completeness, accuracy and timeliness of the data*" submitted by third parties on their behalf is not consistent with the above sentence. Therefore the EDF Group would welcome a clear framework with legal and contractual guarantees for market participants' vis-à-vis their chosen RRM.
- The EDF Group would welcome further guidelines regarding the fees of the service providers.
- We also have some concerns about those services providers or self-reporting entities that do not succeed to pass the registration test on due time. We believe that the Agency needs to provide clear guidelines on retry possibilities in case of registration failure.
- Last but not least, the EDF Group recalls ACER that the confidentiality of the envisaged technical specifications document for reporting entities 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.

Legal framework

2.1.1. Wholesale energy products executed at organised market place

- 1. Do you agree with the Agency's view that post-trade events related to wholesale energy products shall be reported by trade matching or trade reporting systems?*

The EDF Group wonders whether the Agency mentioned that "*the organized market place shall at the request of the participant offer a data reporting agreement*". Indeed, if this data is expected to be reported by the organized market place, there is no need to provide for any activation tool from the market participant such as the conclusion of a reporting service agreement.

We also consider that it would be more appropriate to replace "shall" by "could" on the following sentence: "*Therefore, market participants could rely on organized market places or trade matching and trade reporting systems ...*".

Regarding post trade events, we agree that most of them are not available to organized market places.

2.1.2. Wholesale energy products in relation to the transportation of electricity and natural gas – Primary allocation results

The Agency mentioned that "*TSOs or third parties on their behalf shall report details of contracts relating to the transportation [...] as a result of a primary explicit capacity allocation by or on the behalf of the TSO...*".

Many transactions on capacity also occur on the secondary market. These are also registered with the TSOs. Therefore, the EDF Group considers that what applies to primary capacity allocation should also apply to secondary capacity allocation. Indeed, the fact the capacity has been sold / purchased on the primary or secondary market has no influence on the level and the availability of information concerning these transactions for the TSOs.

2.1.4. Wholesale energy products concluded outside an organized market place

The Agency highlights in the consultation document that "*this is, therefore, the only instance where trade data may have to be reported by market participants themselves.*" We consider this allegation to be untrue. Indeed, even when the reporting is done by an organised market place, the market



participants are also liable to report many ancillary information concerning the orders and all subsequent events such as confirmation, termination, execution ...

2.2. Responsibility for reporting data

The EDF Group welcomes the clarification regarding the allocation of responsibility between the market participant and the third party reporting entity (second paragraph of § 2.4.).

Our understanding is that the market participants will not be responsible of any failures of the third party reporting entity should they be able to prove that they have successfully transferred the information to it. However, we wonder why the consultation document does not address the issue of liability of the third party reporting entity 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. We also consider that the market participants should also be in a position to rely on control mechanisms of what and how the transactions and data are reported.

Finally, we consider that the last sentence of the § 2.4. ("*however, persons required to report...*") is in contradiction with what is stated the second paragraph. As it exists for EMIR, the market participants' obligation must end once the required information is received by the third party reporting entity.

2. *Do you agree that the standards and electronic formats to be established by the Agency according to Article 10(3) of the draft Implementing Acts shall apply to trade repositories and ARMs for the reporting of data covered by EMIR and / or other relevant financial market legislation? If not, please justify your position.*

We agree that the standards and electronic formats to be established by the Agency according to Article 10(3) of the draft Implementing Acts shall apply to trade repositories and ARMs for the reporting of data covered by EMIR and / or other relevant financial market legislation, provided that their implementation costs for REMIT reporting are not higher than if the Agency were to adopt existing EMIR standards and electronic formats. Indeed, these costs are likely to be charged on market participants as an additional transaction fee. Therefore, such a proposal on standards and electronic formats shall not be financially neutral. The cheapest solution should be favoured even if it ends up in adopting the existing EMIR standards and electronic formats for trade repositories and ARMs.

Technical and organisational requirements for the submission of data

3. *Do you agree that the requirements set out above adequately ensure the efficient, effective and safe exchange and handling of information without imposing unnecessary burdens on reporting entities?*

The EDF Group considers these requirements too vague to achieve a reasonable level of guarantee for market participants.

Moreover, in case of disruption of services or security breaches, the EDF Group would have expected chapters 5.9 and 5.10 to specify that RRM's acting as a third party also inform the person for whom it reports (and not only the Agency).

The EDF Group does not agree with ACER's proposal to apply all foreseen requirements to reporting entities, regardless of whether they report their own data or third-party data. We believe that the foreseen requirements are too strict for self-reporting entities. In our opinion, market participants are already subject to penalties under REMIT if they do not comply with the reporting obligation in a complete and timely manner. Therefore, additional requirements are not necessary and will only bring important administrative costs well as additional compliance cost.

4. *Do you agree with the Agency's view that the same requirements shall apply to all RRM's?*

The EDF Group does not agree with ACER's view that the same requirements shall apply to all RRM's. The Agency's arguments on "*having balanced requirements for all reporting entities and in the same time reducing burdens on them*" are not very clear to us as regards self reporting. Indeed applying to self reporting entities the same requirements than to third reporting party entities will, for sure, constitute a significant burden for many market participants. Since REMIT already puts strict compliance requirements and that NRAs are given the right to sanction market participants in case of non-compliant reporting, we believe that the regulation is a sufficient motivating factor for market participants to be fully compliant with reporting obligation.

In its recommendation to the Commission dated 23 October 2012, the Agency mentioned a so-called "Certified Self-Reporting Party" approach that could be more relevant for non-standard contracts reported by one party of the contract, and this approach has never been really developed.

It should also be raised that market participants are used to report data at low cost since most of them already report data to national authorities with no specific requirements and on the basis of technical specifications posted on the web.

5. *If reply to question 4 above is negative, please explain which requirements should apply differently to different RRM's and why.*

As stated in question 3 & 4, applying the same requirements to both self-reporting entities and third party reporting entities will lead to a significant increase of compliance costs and will contribute to create new administrative burdens.

For market participants having a rather small number of non-standard contracts, Certified Self-Reporting Party standards and electronic formats with adapted and simplified requirements could significantly reduce the cost and the operational consequences of REMIT reporting implementation.

It is not a matter of RRM's typology but a matter of the nature of contracts as it has been wisely highlighted by the Agency in October 2012: the requirements should not be the same for standard contracts that have to be reported on a daily basis and for non-standard contracts that have to be reported on a monthly basis. Specific requirements could be applied to non-standard contracts, i.e. the possibility to send csv or xml files directly to ARIS (manually or automatically), with much lower expectations on control, validation, backup, continuity of service and governance procedures than specified in chapter 5.

For example, a market participant having to report from 10 to 20 non-standard contracts could be registered as a "*Certified Self-Reporting Party for Non-Standard Contracts*". With a simple user access to ARIS and procedure, it could easily fulfil its reporting obligation in submitting a file directly to ARIS website every month.

Moreover, it is likely that this kind of lighter procedures will be proposed by third party reporting entities to market participants as it already exists for the EMIR reporting. We believe that the burden cost for market participants could be reduced if this service is provided directly by the Agency as part of ARIS functionalities for non-standard contracts.

6. *Notwithstanding the requirements on the validation of output (see Chapter 5.6. above), should the Agency offer to entities with reporting responsibilities to request access to the data submitted on their behalf by third-party RRM's?*

Yes, we agree. It is of the utmost importance for entities with reporting obligation to have access to the data submitted to the Agency on their behalf by a third party RRM. Being able to compare these data with the data they record in their internal systems is the only way to implement Agency's recommendation of chapter 2.4 : "*However, persons required to report data shall take reasonable steps to verify the completeness, accuracy and timeliness of the data which they submit through third parties*".

Nevertheless, the EDF Group strongly believes that once a market participant decides to report through a third party RRM, this RRM should be fully responsible for the completeness, accuracy and timeliness of the data sent.

7. *If the reply to question 6 above is positive, please explain how such access should be granted, taking into consideration the need to ensure operational reliability and data integrity.*

When registering as a market participant, each company should be granted a certain number of user accounts giving the possibility to few staff members to consult and export all the data that concerns their company (trade data and fundamental data), no matter how and by who the data were submitted to ARIS.

8. *Do you agree that the compliance report must be produced by the RRM on a yearly basis or shall such report be compiled only at the request of the Agency?*

No, we disagree. RRM should be requested to produce a compliance report only in the frame of a global control procedure launched by the Agency. Moreover, the Agency should provide for more information about the content of this report before the registration of RRMs. See answer 14.

Additional comments on Chapter concerning the technical and organisational requirements for the submission of data

§ 5.2. We understood that the Agency could request RRM to produce procedures' documents at the stage of the registration or at a stage later. The role of the Agency regarding these documents is unclear. Will they analyze them or just check that they exist? What happens if the Agency disagrees with the content of the procedures before or after the registration process has been completed?

§ 5.9. We consider that 5 working days following the disruption to produce the requested report is far too short.

Registration

9. *Do you agree that trade repositories and ARMs shall be registered with the Agency, even if they only report data reportable under EMIR and / or other relevant financial market legislation?*

Yes, we agree. Trade repositories and ARMs shall also be registered with the Agency, in order to enable the Agency to identify and collect EMIR data subject to REMIT without any solicitation of market participants.

10. *Do you agree that the Agency should foresee a simplified registration process for trade repositories and ARMs that only report data reportable under EMIR and / or other relevant financial market legislation?*

Yes, we agree. These entities are already certified under EMIR for reporting purposes within more stringent criteria than those described in this consultation paper.

11. *Do you agree that CEREMP should be used for the identification of market participants that apply to become a RRM?*

Yes, we agree. It is the same tool as the market participants' registration one and it is clearer to refer to a unique registration environment.

12. *What is your opinion on the timeframe needed to complete the registration process?*

A three months registration process will be too long especially while considering the number of RRMs that will have to register. Moreover, this registration period will shorten the time left to reporting entities to develop and implement REMIT reporting procedures and systems. Indeed, fulfilling Agency's requirements for registration means having operational procedures completed and described, and IT systems ready to go-live. Reporting entities will then have three months less to implement reporting procedures and to realise IT developments. This very short deadline advocates for lighter requirements on self-reporting entities.

13. *Do you have any comments on the registration process in general?*

As regards timing issues, the EDF Group believes that RRM Technical specifications should be available to RRMs well in advance before registration starts. These specifications are indeed of paramount importance to enable reporting entities to set up all the systems in a very tight schedule.

§ 6.2.3. We understand the applicants' obligation more as a simple statement than an attestation. As regards the documentation to provide, we were expecting from the Agency more thorough and detailed information regarding the requirements and the content of the documentation.

§ 6.2.4. A threshold of what? What would be the criteria to assess this threshold? What would be the level of this threshold?

§ 6.2.5. We do not understand the sentence: "*the RRM applicant is responsible for the establishment, production and delivery of an RRM.*"

Assessment of compliance with the requirements

14. Would the periodic renewal of registration be a valid alternative to the certified annual report?

RRMs are required to put in place internal controls and procedures to ensure compliance with the Agency's requirements. Therefore, we believe that the Agency should also put in place procedures such as audits to verify that a RRM fulfils their requirements. Once registered, a RRM should not have to go through another testing phase, nor have to send again documents already approved by the Agency.

Setting a control procedure rather than a yearly registration of RRM could be more efficient and globally less burdensome and expensive. This control procedure could include (i) a request to provide a compliance report - including a request to RRM to deliver updates of procedures and documents - (ii) a control of completion and accuracy of the report directly from live system (with the same threshold than in registration process), and (iii) the possibility for the Agency to give recommendations or warnings to the RRM at the end of the control.

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