

COMMENTS ON ACER CONSULTATION ON THE ACER GUIDELINES FOR THE REGISTRATION OF REGISTERED REPORTING MECHANISMS (RRMs) AND FOR THE REGISTRATION OF REGULATED INFORMATION SERVICES (RIS)

GENERAL REMARKS

Assoelettrica welcomes the present public consultation on the Guidelines for the Registration of RRMs and RIS, that will both play a key role in reporting transactions and publishing inside information according to REMIT requirements.

As a general comment, we wish to highlight that a clear distinction should be drawn between (i) third parties who report transactions on behalf of market participants and (ii) market participants directly reporting transactions. On the one side, market participants should have the highest possibility of delegating reporting to all those entities which, in their role of market operator, system operator or regulatory authority, already enter into possession of reportable trades/information. On the other side, any market participant who wants to directly report to ACER would be allowed to do so. In that case, we expect the certification process to be lighter for “self-reporting” market participants with a compliance check limited to verify that their technical and organizational capability is sufficient to meet the technical rules defined by ACER for a safe, reliable and well-functioning data transfer.

Therefore, we understand that the requirements, criteria and obligations set by the current version of the Guidelines are designed specifically for platform operators reporting on behalf of market participants in order for them to meet the necessary technical and organizational standards for the provision of the reporting services.

Another important issue which is not adequately addressed in these Guidelines is the liability of RRMs and RIS in case of technical failure of their reporting systems or possible breaches of the security measures. As regards RRMs, once the information is communicated by the market participants to a Third Party acting as RRMs, the reporting obligation on the market participants should be considered fulfilled, as it seems consistent with REMIT articles 8.1 and 8.4. In order to limit the reporting burden upon them, market participants delegating their reporting task should rely on a clear contractual framework aimed to ensure the accountability and business continuity 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 or when they publically disclose inside information on behalf of market participants.

Therefore, we believe that ACER should carefully assess the ability of candidate RRMs and RIS to provide the necessary legal and contractual guarantees to market participants. In this way, market participants can consider themselves compliant with reporting obligations once the information is successfully received by the RRMs and RIS whereas data security and integrity is adequately safeguarded.

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 reporting transaction and transparency information on behalf of market participants 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 with the possibility to require additional information when relevant. RRM 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 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 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.

- 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.**

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.

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

On this point, please see general comments.

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 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 considerable 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 of data reported, reliability and security of the IT system being developed by ACER and RRM reporting transactions on behalf of market participants. Thus, the obligation for RRM to have an ISO certification 27001 or similar are fully justified by the need to ensure a reliable information security management system.

As explained in the general remarks, we do not think 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 favor of ACER proposal on a simplified registration procedure as RRM for trade repositories registered according to EMIR. Moreover we deem of utmost importance that Trade Repositories acting as RRM provide the necessary legal and contractual guarantees to ensure the market participants' compliance with REMIT obligation also in case of system disruptions.

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

We generally agree with the RRM performance criteria proposed by ACER.
We would also like to draw ACER's attention to some specific comments:

- **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.
- **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. 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.

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 would like to underline that reporting to ACER of fundamental data or inside information (both in principle already published on websites) can imply significant additional costs for market participants or central platforms having to develop information streams that already exist.

Moreover, we wish to underline that in some European countries national transparency platforms for the publication of inside information and transparency information have not been established yet. In this 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. From this perspective, we reaffirm the necessity that the reporting obligation is set to be in force only

once all intermediation and delegation entities, that it allows market participants to use, are in place and ready to operate. This is true not only for fundamental data reporting, but also for reporting of transactions data.

- 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 favor the establishment of centralized European transparency platforms by ENTSO-G and ENTSO-E as the most efficient tool to ensure the wide dissemination 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 are made available. Nonetheless, it is worth repeating that reporting of publicly available information may impose undue burdens on market participants and platforms operators and for this reason 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.

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

The use of web-feeds to report inside information to ACER 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.

- 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 also to RIS reporting individual and non-aggregated information.