

ACER Guidelines for the registration of  
Registered Reporting Mechanisms and for  
the registration of Regulated Information  
Services for ensuring operational reliability  
according to Article 12 of Regulation (EU)  
No 1227/2011

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A EURELECTRIC response paper



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SG Financial Regulation & Market Integrity

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# **EURELECTRIC response to ACER Guidelines for the registration of Registered Reporting Mechanisms and for the registration of Regulated Information Services for ensuring operational reliability according to Article 12 of Regulation (EU) No 1227/2011**

## **Call for comments**

The Agency hereby arranges a public consultation on the draft ACER Guidelines for the registration of Registered Reporting Mechanisms and Regulated Information Services.

Comments are welcome on all aspects of the issue. However, the Agency has included a number of questions to draw respondents' attention to those areas where it would be particularly helpful to receive feedback.

## **Consultation questions**

### **I. 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 ACER proposal of a two-steps registration process, which should always guarantee that RRM and RIS reporting on behalf of market participants strictly comply with organizational and technical requirements set by the Agency.*

*EURELECTRIC would be grateful for clarification on whether market participants that wish to report themselves directly do not have to register as RRM. If it is not the case, in the interest of efficiency – and with the aim of limiting the burden placed on market participants should they be required to register themselves as Registered Reporting Mechanisms (“RRMs”) for the purpose of reporting only their own transactions and orders to trade (we believe they should not – see question 2) – the registration procedure should be as straight forward and as simplified as possible in case of direct reporting, and should avoid adding administrative burdens and potential costs to market participants.*

*Furthermore, while the process of having to request a copy and sign a non-disclosure agreement in order to receive the technical specifications document appears to be a cumbersome step, it is nonetheless suitable since it forms part of accepted best practices applied by national financial regulators.*

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 with limiting the provision of reporting services to RRM and RIS subject to the EU jurisdiction.*

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

*EURELECTRIC generally agrees that platform operators should be mandated to report transactions in standardised contracts in case market participants require doing so. We believe that this option would reduce the overall cost for reporting and the burden on market participants. ACER should support the definition of the framework on responsibilities, particularly relevant in case of possible failure in delivering the data.*

*EURELECTRIC believes that it should be however possible for market participants to report directly all reportable contracts in case this is determined as preferable or, for instance, in case IT investments are anyway necessary and the market participant consequently opt for direct reporting. In such a case, we believe that the requirements must be non-discriminatory in order to make effectively available the option for market participants to report themselves. Such requirements should be subject to consultation as soon as possible, in order to allow market participants to evaluate carefully all the options available to comply with their respective reporting obligation. Moreover, we expect that a market participant willing (or having) to directly report its own transactions to ACER should not register as a RRM, though, of course, being asked to comply with some transmission requirements and security standards. Again, these IT standards should be defined as soon as possible, with some form of involvement/consultation of stakeholders.*

*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.*

*We would have also the following comments:*

- Among the technical requirements to report information according to REMIT, ACER seems to provide for a different treatment for RRM and RISs: in particular, ACER does not expect to receive from entities applying for RIS registration any information concerning the contingency plan and the fees it intends to charge. In our opinion, these two conditions should be required from RIS as well.*
- We appreciate ACER proposal that EMIR authorized Trade Repositories are registered as RRM as long as they respect requirements of implementing technical standards. EURELECTRIC strongly believes that there should be close cooperation between ACER and ESMA and the Trade Repositories currently seeking registration for EMIR purposes. It is crucial that before any arrangements with Trade Repositories is finalized, that they are capable of coping with receiving data relating to wholesale energy products (some of which may be only REMIT applicable). To ensure alignment between Trade Repositories and RRM and to avoid the prospect of market participants having to report additional information for REMIT purposes unilaterally due to Trade Repositories not being able to facilitate acceptance of REMIT specific data, immediate communication between ACER, ESMA and Trade Repositories is strongly urged. In our opinion, the same almost automatic registering as RRM should be foreseen for all those entities which, in their role of market operator, system operator or regulatory authority, already enter into possession of reportable trades. Likewise, entities expected to enter into possession of inside information should be required to register as RIS and, in presence of adequate agreements with market participants, be required to disclose inside information (for example, TSOs).*
- Finally, we suggest that Guidelines for registration of RRM are the occasion to specify more in detail which are the entities and platforms expected to register as RRM for which kind of information (for example, TSOs for information on scheduling and nomination, PXs for information on trades concluded thereof, trade matching and trade reporting systems for standard transactions executed out of organized market places, and so on).*
- One last specific remark on the RRM Guidelines: The aim of having RRM undergo the so-called "renewal procedure" (see point 5.5) on a biannual basis should be reconsidered. Especially cases of direct reporting, if RRM registration is required, this seems to place an unnecessary administrative burden on them. It should be sufficient to renew the registration on a biennial basis, and in the 'worst case', on an annual basis.*

## II. 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 2701 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?

*First of all, we would have an editorial note: we believe the correct ISO certification is the "ISO/IEC 27001:2005 - Information technology – Security techniques – Information security management systems – Requirements".*

*Secondly, since a certification such as the proposed one "or similar" would act to ensure that all RRM's have explicit management control over their information security, this would indeed be a preferable requirement to ensure the operational reliability of the reported information.*

*However, market participants directly reporting information themselves should be permitted to prove the operational reliability of the information in a less stringent manner should such certification prove costly.*

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

*We appreciate the proposal that trade repositories are considered as registered RRM's if complying with requirements of EMIR technical implementing standards, thus through a simplified procedure. This is a fundamental step towards avoiding double reporting, as it would de facto attribute reporting responsibility to TRs.*

*However, as already stated in the other consultation document, we would like to take this opportunity to underline another condition for avoiding double reporting: trade repositories, registered as RRM's, should have in their database and be able to send to ACER all the necessary reportable information, including data and fields with compatible standard codes and formats that are not required by EMIR, but should be reported under REMIT. Otherwise, market participants would be required to twice provide information on the same transaction: first, to the TR, under EMIR, and then to ACER, integrating the information already provided with additional fields required under REMIT.*

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

*Though expressed in very general terms, we agree with the proposed criteria and requirements, which should be a sound guarantee for the confidentiality of information and operational reliability.*

*However, this is an on-going process and some specific and unforeseen problems could arise and become evident only when the reporting process is working at full*

*regime. Hence, ACER should include in the registration process the possibility for revision of the proposed criteria and of the Technical Specifications for RRM and RISs.*

*Concerning the information that RRM are required to submit, due attention should be paid to fees. First of all, registering RRM should be able to justify these fees as completely cost-reflective and, secondly, ACER approval of RRM registration should also assess the appropriateness and proportionality of these fees. Although ACER did not mention the issue of fees concerning RISs, we think that the same principles of ACER monitoring of fees appropriateness and cost-reflectiveness should apply to them as well.*

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?

*Given the frequent confidential and commercially sensitive nature of data that will be managed by RRM and RIS, these should be required to periodically go through an independent and external check on the security of their databases and systems for data transmission.*

*However, further clarity needs to be brought as to what exactly this new annual report would entail for the individual market participants, in case these are required to register as RRM to report only on behalf of themselves. In our view, the obligations for these "direct reporting entities" in regards to their annual reports should be kept at a minimum, or not be required at all.*

*Furthermore, always under the hypothesis that direct reporting requires an RRM registration, it would be helpful if ACER could clarify the repercussions that a "direct RRM" could face in case external auditors were to find that not all criteria were met for all 12 preceding months. At the moment there is no mention of any possible sanctions or penalties for non-compliance with all criteria (except for in the immediate short run, which would entail immediate notification and report to ACER in accordance with point 5.3. "Notifications").*

### III. 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?

*The distinction between types (2) and (3) of the proposed RISs is not clear. Additional information is required.*

*Furthermore, it is unclear in which category the platforms where individual market participants publish their own inside information regarding their own assets – e.g. their own websites, as recognised by the ACER 2nd Guidelines p.16 and p.35 – would fit. In this context it seems necessary to clarify which type the increasingly established transparency platforms (e.g. EEX, Nordpool, RTE\_UFE) would constitute.*

*In any case, from the market participant perspective, there should not be a need to report to more than one such platform, and hopefully the same platform disclosing inside information should be allowed to also publish fundamental data, given the evident synergies among these two activities.*

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?

*Yes, ENTSO-E and ENTSO-G should play a crucial role in reporting transparency information that they will publish under Regulations 714 and 715 of 2009. We also believe that additional processes should only impact TSOs alone and not on market participants.*

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

*The confidentiality of all communications with the Agency must be ensured according to standards that are similar to those which are used to report inside information through financial information platforms.*

*In addition to making this information available to ACER, appropriate conditions should be set guaranteeing that RIS are able to automatically and immediately disclose inside information they receive from market participants or system operators within specified timelines. Market participants' responsibility for the reporting of such information should dissipate once the information has been sent or becomes known to the RIS. This avoids double reporting and reduces the onerous nature of the processes required.*

*We understand that this issue is not strictly related with the object of this consultation; however, whether through a new ACER consultation or in the process of supervising the establishment of inside information platforms, due attention should be paid to it, which, from the perspective of market participants, is as important as the ability of the RIS to later send the 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?

*Despite not knowing the requirements of the “technical specifications document”, we agree that in principle the same criteria for guaranteeing confidentiality should be required to RIS, when reporting individual non-aggregated data, and to RRM, when reporting trade data.*



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