

**Public Consultation**  
**on the draft recommendations to the Commission as regards the records of**  
**wholesale energy market transactions, including orders to trade, and as regards**  
**the implementing acts according to Article 8 of Regulation (EU) No 1227/2011**  
**(Public Consultation Document PC\_2012\_R\_10)**

**– Response of the ECT-Group –**

**I. Introductory Comments**

We are representing the Energy Commodity Traders Group ("ECT-Group"), a group of mostly German energy trading firms which established a joint working and discussion group for the exchange of experiences in financial and physical energy trading and for the coordination of the communication with German and European authorities. We would like to respond to the Public Consultation on the introduction of a Europe-wide Energy Wholesale Trading Passport.

The ECT-Group consists of entities active in the energy trading sector; several of them pursue also banking activities or render financial services related to energy derivative products. Entities which pursue banking activities or render financial services related to commodity derivatives are according to the German Banking Act investment firms which have to apply for a license in order to carry out the banking activities or financial services related to commodity derivatives and which are supervised by the German Financial Supervisory Authority Bundesanstalt für Finanzdienstleistungsaufsicht ("BaFin"). The ECT-Group serves as a platform for such firms in order to develop common positions with respect to the financial supervision and to communicate them to BaFin and other legislative and administrative bodies. There has been a steady and successful cooperation between BaFin and the ECT-Group in order to develop an adequate supervisory regime for investment firms rendering financial services related to energy derivative products.

**II. Statement**

The ECT-Group supports the Commission's efforts to provide for more transparency on the wholesale energy market and thus to strengthen the market participants' trust in the integrity of electricity and gas markets as well as ensure competitive wholesale prices.

These objectives, however, must not be pursued in a way that creates additional, unnecessary administrative burdens for the companies. Therefore, the ECT-Group believes

that the objectives to be achieved must be carefully weighed against the costs and burdens arising therefrom for the market participants.

Thus, it appears to be imperative that exceptions and *de minimis* rules are provided for small and medium-sized market participants. Small and medium-sized market participants cannot significantly influence the market prices with the volumes generated and traded by them. The costs for the obligations that would still be imposed on them would not be in a balanced relationship to the targets pursued with REMIT. Moreover, these costs are considerable also (and especially) for these companies: one would need additional IT, additional staff, additional legal advice and would thus have much higher costs for a low trading volume. As a result, it is to be feared that small and medium-sized companies would suspend the trade in wholesale products and would go back to full supply. This would lead to lower market liquidity and as a result to more volatile and, as the case may be, to higher prices.

### **III. Detailed answers to the questions**

Therefore, in consideration of the foregoing, please find in the following our detailed answers to your question that are important to us:

#### **Question 2:**

What are your views regarding the details to be included in the records of transactions as foreseen in Annex II? Do you agree that a distinction should be made between standardised and non-standardised contracts? Do you agree with the proposal on the unique identifier for market participants?

The ECT-Group basically welcomes the obligation to comprehensive reporting of all relevant data and information from the on and off-exchange trading in electricity and gas. This is the only way to create a transparent and fair market. In this respect, a distinction between standardised and non-standardised contracts makes sense. However, the requirement for the data to be reported must not lead to unnecessary red tape. Even though it is comprehensible that all records of transactions should also include lifecycle information on the post-trade stage, facilitations would be desirable based on which the market participant's additional expenses are taken account of. In this context, it would be possible, e.g. that only essential changes are reported or that the lifecycle information is provided to the Agency on a quarterly basis (for standardised contracts) or on an annual basis (for non-standardised contracts).

#### **Question 3:**

Do you agree with the proposed way forward to collect orders to trade from organised market places, i. e. energy exchanges and broker platforms? Do you think that the

proposed fields in Annex II.1 will be sufficient to capture the specificities of orders, in particular as regards orders for auctions?

Yes. It is reasonable to record and collect orders to trade from organised market places and report to ACER. Such an approach would prevent unnecessary red tape and double reporting, would reduce the administrative efforts in general and simplify the monitoring.

**Question 7:**

Which of the three options listed above would you consider being the most appropriate concerning the *de minimis* threshold for the reporting of wholesale energy transactions? In case you consider a *de minimis* threshold necessary, do you consider that a threshold of 2 MW as foreseen in Option B is an appropriate threshold for small producers? Please specify your reasons.

The ECT-Group supports the introduction of a *de minimis* threshold. This is reasonable especially for small and medium-market participants, which carry out considerably less wholesale trading activities and which, based on the energy volumes generated, traded, transported and consumed by them, have no influence on the market prices. As already mentioned above, the additional technical, operational and financial efforts would place an excessive burden on these market participants and as a result, would drive them out of the wholesale market. This would weaken the market and reduce the liquidity. Against this backdrop, none of the options appears to be really suitable; Option B is close, though. (Please see answer to question 8). However, it is reasonable not to refer only to small producers, but also include the medium-sized producers. These too cannot significantly influence the market prices with the volumes generated and traded by them. Placing the same obligations on these market participants as on large market participants would be disproportionate and would not support the objectives pursued by REMIT.

Furthermore, in ECT-Group's opinion it would be useful to apply the *de minimis* threshold even when the market participants are trading at organised market places and the reporting is not assumed by the market place, because in this case too the market price would not be influenced.

**Question 8:**

Are there alternative options that could complement or replace the three listed above?

The ECT-Group believes that there are better options for achieving the listed targets. The *de minimis* threshold should not only be applied to the generation volume but also to the annual turnover/consumption. The existing threshold of 600 GWh for end consumers could be applied in this case too.

The concept applies in particular for companies with relatively small transaction volumes, like small or medium-sized public utilities (*Stadtwerke*) which have no influence on the market prices. They trade in considerably less wholesale products and, are kind of final consumers from the market point of view, as their trading activity only includes the purchase and the delivery of the purchased energy to their customers (who are no energy market participants subject to reporting). Since the efforts for these companies would increase for every reporting, it would be reasonable to provide for exceptions that are in conformity with the targets pursued by REMIT. Thus, there are two possible options for small and medium-sized market participants with an annual turnover of less than 600 GWh:

1. These market participants are not subject to reporting obligations.
2. These market participants are subject to a facilitated data reporting: On the one hand, there would be the possibility of an ex-post reporting at the end of each year. On the other hand, there would be the possibility of collective reporting (e.g. on a monthly or a quarterly basis) for standardised products over longer periods of time. Standardised products of these companies do not influence the market prices. Both the ex post and collective reporting would provide a complete overview of the market and would allow the small and medium-sized market participants to fulfil their duties with an acceptable amount of effort.

**Question 10:**

Do you believe the Commission through the implementing acts or the Agency when registering RRM should adopt one single standardised trade and process data format for different classes of data (pre-trade/execution/post-trade data) to facilitate reporting and to increase standardisation in the market? Should this issue be left to the Commission or to the Agency to define?

In the ECT-Group's opinion, it is imperative to adopt one single standardised trade and process data format. More clarity is required especially because the data reporting by the market participants, including the adjustment of the existing or the establishment of the required IT structure make it necessary. In this context, it is necessary that ACER defines the formats clearly and makes them available in electronic form. With the standardised formats, market participants could adapt themselves to the requirements, establish them and would not have to bear additional costs for any adjustments. Furthermore, standardised formats contribute to more legal certainty and transparency in the markets.

In the event that ACER provides for a facilitation of the data reporting for small and medium-sized market participants (Please see answer to question 8), both the format and the registry should contain a reference to the facilitated reporting.

**Question 13:**

In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?

Yes.

**Question 19:**

The recommendation does not foresee any threshold for the reporting of regulated information. Please indicate whether, and if so why, you consider a reporting threshold for regulated information necessary.

Yes, we consider setting a threshold also for the reporting of regulated information to be necessary. As regards fundamental data the ECT-Group recommends a threshold of 100 MW for power plants. In our experience, the failure of power plants with a capacity of less than 100 MW does not influence the prices in the German market. This reporting threshold is considered as sufficient also by the EEX transparency platform, which has been publishing market-related, generation and consumption data since 2009.

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