

ACER 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

A EURELECTRIC response paper



The **Union of the Electricity Industry–EURELECTRIC** is the sector association representing the common interests of the electricity industry at pan-European level, plus its affiliates and associates on several other continents.

In line with its mission, EURELECTRIC seeks to contribute to the competitiveness of the electricity industry, to provide effective representation for the industry in public affairs, and to promote the role of electricity both in the advancement of society and in helping provide solutions to the challenges of sustainable development.

EURELECTRIC’s formal opinions, policy positions and reports are formulated in Working Groups, composed of experts from the electricity industry, supervised by five Committees. This “structure of expertise” ensures that EURELECTRIC’s published documents are based on high-quality input with up-to-date information.

For further information on EURELECTRIC activities, visit our website, which provides general information on the association and on policy issues relevant to the electricity industry; latest news of our activities; EURELECTRIC positions and statements; a publications catalogue listing EURELECTRIC reports; and information on our events and conferences.

EURELECTRIC pursues in all its activities the application of the following sustainable development values:

Economic Development

▶ Growth, added-value, efficiency

Environmental Leadership

▶ Commitment, innovation, pro-activeness

Social Responsibility

▶ Transparency, ethics, accountability

ACER 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

WG Wholesale Markets & Trading

Juan Jose ALBA RIOS (ES), Chair

Marcel CAILLIAU (BE), Vice Chair

Markos CHAMPAKIS (GR), Richard COMBESCURE (FR), Philip DAVIES (GB), Hakon EGELAND (NO), Håkan FEUK (SE), Ferenc FRANKO (HU), Egor GRINKEVICH (RU), Lesley HOGG (IE), Fernando LASHERAS GARCIA (ES), Henrique LOBO FERREIRA (PT), Ruud OTTER (NL), Carlo POLIDORI (LU), Rodica POPA (RO), Edgar ROECK (AT), Dominik ROMANO (CH), Vidmantas SALIETIS (LT), Birol SEMERCI (TR), Drago SKORNSEK (SI), Charlotte SOENDERGREN (DK), Pekka VILE (FI), Andrea VILLA (IT), Bohdan VRAZDA (CZ), Bernhard WALTER (DE), Krzysztof ZAMASZ (PL)

SG Financial Regulation and Market Integrity

Bernhard WALTER (DE), Chair

Juan Jose ALBA RIOS (ES), Elisabeth BERTIN (FR), Anya BISSESSUR (NO), Eddie BYRNE (IE), Cédric CHRISTMANN (CH), Geert DHOOGHE (BE), Maria Dolores GARCIA RODRIGUEZ (ES), Nynke GEERTS-ZANDVELD (NL), Alexandra GRUBER (AT), Michael GURSCHLER (AT), Petteri HAVERI (FI), Lucie HOROVA (CZ), Peter G. KRUSAA (DK), Jan Willem LENDERS (DE), Catherine LILLO (SE), Oliver LORIG (AT), Pierre SCHLOSSER (BE), Andrea STENGEL (NO), Giuseppe TRIBUZI (IT), Renaud VAN DER ELST (CH), Martijn VAN GEMERT (NL), Jorgen Holm WESTERGAARD (DK)

Anne-Malorie GERON (EURELECTRIC Secretariat), Charlotte RENAUD (EURELECTRIC Secretariat)

Contact:

Charlotte RENAUD – crenaud@eurelectric.org

EURELECTRIC's response to ACER 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

EURELECTRIC believes that data collection for **market monitoring is a very critical activity**. For this reason **the framework to be adopted should provide a high level of clarity** to those market participants required to report.

As a general comment, EURELECTRIC would like to emphasise the need to respect the following principles regarding data collection and reporting:

- **All data collection and reporting, including content, format, and frequency and timing, must be directly related to the stated purpose of REMIT; i.e. allowing regulators to monitor potential market abuse.**
- **In case any intermediate channels/forums are used between the market participant and ACER, rock-solid guarantees must be provided within the implementing acts that:**
 - o Application of the highest standards for data security is ensured;
 - o Data confidentiality of commercially data sensitive is guaranteed at any time by such intermediate entities, and infractions will be sanctioned;
 - o Data provided to intermediate entities cannot be used for any other purpose than monitoring of market abuse as defined under REMIT.

Therefore, an appropriate level of regulation with regard to Registered Reporting Mechanisms (RRMs) and Regulated Information Services (RISs) is needed and the current Art. 17 of REMIT provides insufficient guarantees with respect to both points mentioned.

The Agency for the Cooperation of Energy Regulators (ACER) should find appropriate legal arrangements to fully ensure the application of provisions in article 8.1: *«While overall responsibility lies with market participants, once the required information is received from a person or authority listed in points (b) to (f) of paragraph 4, the reporting obligation on the market participant in question shall be considered to be fulfilled»*. EURELECTRIC believes that ACER should recommend a **phased approach** for transaction reporting and also allow for a sufficient **testing period**.

Additionally, ACER should ensure a high level of **coordination** with ESMA. EURELECTRIC believes that, requiring market participants to adopt and follow exceedingly complex internal rules to correctly identify the recipient database/repository the transactions should be reported to, is a much worse outcome than having to report the same information 'twice' to different recipients. Given the subject complexity of the forthcoming obligations and in order to avoid any sort of duplication of reporting for companies subject to both EMIR (European Market Infrastructure Regulation), REMIT and possibly also MiFID (Markets in Financial Instrument Directive), the relevant regulatory authorities must implement reporting requirements in the most coordinated way and allow an appropriate implementation period for non-financial companies. Market participants expect ESMA (European Securities and Markets Authority) and ACER to reach specific and precise agreements on the clear-cut and standardized definitions of common trade repositories, common format, timing and content of reporting, common ID for market participants,...

Specific Remarks

Type of products to be reported

In general, EURELECTRIC believes that the reporting of transactions should be required with respect to **standard products** and **concluded transactions only**. EURELECTRIC believes that the reporting of non-standard contracts would be too burdensome, mainly because it could not be done automatically but rather would require manual work. Furthermore, the reporting of non-standard contracts would do little to support the detection of market misbehaviour. It may also raise concerns over commercial sensitivities of such long-term and complex deals. Equally burdensome would be collecting and reporting orders to trade, which moreover, once received by ACER/NRAs, can prove to be difficult to manage.

In case ACER's final recommendations takes the view that market participants have to report non-standardised contracts, we suggest to limit the number of mandatory fields and not to request any submission of the contract. EURELECTRIC does not support the need to identify two separate sets of information to be submitted as this would increase reporting complexity. We believe the characteristics of non-standard deals that cannot be identified will not be recorded and reported. Moreover, we estimate that at least two months would be necessary to provide information on such contracts after conclusion.

ACER has not referenced explicitly any obligations with respect to the reporting of transactions with entities within the same corporate group. Therefore, we understand the reporting of such transactions is not required. In our opinion, ACER's recommendations to the European Commission should clearly specified that intragroup transactions should be excluded from regular reporting and that it could be done on an ad-hoc basis at ACER/NRAs' request. Given the overall objective of REMIT to prevent market abuse and insider trading, we believe that continuous reporting on such transactions is not needed due to the absence of impact of intragroup transactions on the formation of market price.

Trade Lifecycle, Matching and data quality

The recommendations should specify more clearly the Trade Lifecycle event that triggers the reporting obligation. If this moment is the **initial trade capture**, (i.e. the moment in which the full terms of the transaction are entered into the trade capture systems), some of the information required will be difficult to provide or the data provided may have some level of inaccuracy.

For instance a common trade ID is part of services for electronic matching that counterparties may subscribe as part of a matching process. If counterparties will be required to perform the **matching** of data before submission, this will affect the requirement to report 'no later than the close of the working day following the execution'. If matching is not required, ACER should allow for a certain margin of error and unmatched data and a common trade ID will be difficult to agree.

ACER should consider imperfections in data transmission; below a pre-defined level, no actions should be required of the counterparties.

EURELECTRIC would like to emphasise the complexity of reporting '**dynamic**' information, i.e. reporting changes in specific fields related to the same record (transaction) that may change during the 'lifecycle' of the transaction. Furthermore ACER does not refer to possible changes (e.g. corrections) in information submitted, when such changes do not constitute lifecycle information on the post-trade stage.

We would like also to stress that ACER should keep in mind that an overload of information will make market monitoring processes very difficult. This will also imply the creation of over-dimensioned IT systems (database, load of transactions, potential security breaches...etc.).

Operational standardisation

In defining the final recommendations, ACER should take into account that the level of standardisation in post-trading activities in energy markets is still limited. **Operational standardisation** is an on-going process and currently is dependent on the type of energy commodity and the geographical scope. For instance, in some products/markets *manual confirmation* is still a practice widely used in particular by smaller counterparties. This process involves two counterparties and neither of the two can influence if and when the other will finalise its part of the process.

Emergency and force majeure

Clear provisions on how correctly manage **accidents, force majeure** situations and fall-back procedures are needed in order to acknowledge that the failure of systems is possible.

Unique Identifier Code

EURELECTRIC believes that the issue of a 'unique identifier' is linked to the definition of market participants. It is indeed necessary to ensure that the system adopted is suitable for the purpose of market monitoring and that it does not create confusion. In particular it should be ensured that the same code not identify more than one market participant. In principle we would prefer an existing code already assigned to market participant so that uniformity across regulatory regimes can be attained.

In general, we believe that an existing code should be preferred as long as it is generally accepted and ready to be used without time consuming and costly adaptations.

Instead of introducing a complete new REMIT identifier, we would propose to use the cross-sectoral global Legal Entity Identifier (LEI) code system (that we must also have to use under EMIR), once it is introduced and translated into business processes.

In the last paragraph of section 2.5 and in Annex II.1 (fields 6 and 7) ACER proposes to report the "username" of the trader involved in the transaction, generated freely by each market participant but linked to a list of its traders that must to be maintained in the company. As the purpose of the reporting of transactions is to allow ACER to monitor the market, we believe that this kind of information exceeds the reasonable scope of the reporting obligations and can imply legal problems. Therefore we believe that providing this information should not be required.

Formats and procedures

The provisions related to the **format** of the information to be submitted are crucial to develop concrete projects to implement reporting requirements. It is very important that ACER provide a sufficient level of detail regarding these requirements so that market participants can take the needed steps to prepare. The ACER Trade Database must have in place robust procedures in order to ensure that any operational issues can be resolved also through appropriate and stable interfaces.

Standard bilateral contracts

Finally, a specific attention should be dedicated in ACER's recommendations to bilateral transactions in standard contracts. In fact, market participants will be required to directly report them to ACER, such as they would do with transactions in non-standard contracts, but with more demanding formats and more challenging timings. Reporting this kind of transactions may not be easy for market participants, especially if asked with the same deadline as other standardized transactions carried out through organized market places, not to mention the difficulty of reporting their corresponding orders to trade. In consideration of these complexities, we would suggest that ACER introduces some exceptions for bilateral contracts in terms of longer times for reporting, or simply provides for a similar treatment as non-standardized transactions.

Question 1 - Do you agree with the proposed definitions ? If not, please indicate alternative proposals

The definitions are a key element for the implementation of data collection under REMIT. Therefore they must be introduced carefully with an eye to avoiding any possible overlapping terms and definitions. To the greatest extent possible, potential misunderstandings and ambiguity should be avoided through the use of terms and definitions that lead to a straightforward interpretation. Definitions must avoid any possible ambiguity able to generate uncertain legal interpretation for reporting market participants and market places.

It is also key to ensure that the definitions proposed by ACER are consistent/compatible with the definitions used in other relevant financial regulation such as the Markets in Financial Instruments Directive (MiFID), the European Market Infrastructure Regulation (EMIR), the Market Abuse Directive (MAD), the Fundamental Electricity Data Transparency guidelines (FEDT) and maybe even the Network Code on Capacity Allocation & Congestion Management (NC CACM).

Regarding the definitions of transaction, agreement, contract and trade, we believe that it is important to reflect the structure of the most common standard agreements currently in use.

We have the following remarks:

- The proposed definitions of **'transaction'** and **'agreement'** proposed do not seem to identify different subjects. We would therefore propose to use them as synonymous or to delete the term **'transaction'**. Further we propose the following amendments:
 - *"Trading Agreement": a legal agreement between two or more parties that defines the rights and obligations of the parties with respect to the purchase and sale of wholesale energy products. "Trading Agreement" shall include bilateral bespoke agreements in addition to master trading agreements.*
- The definitions of **contract**, **execution** and **trade** seem partially overlapping, hence we suggest the following:
 - *"Transaction/Trade": is an agreement on purchase or sale pursuant to a Trading Agreement or pursuant to the terms of a Contract listed on an organized trading market that foresees the delivery of physical electricity or gas by one party and the entering into a financial obligation by the other party. A "Transaction/ Trade" would include at least agreement as to price, delivery point, and quantity.*
 - *"Trade Execution": means the point in time when the parties evidence agreement (whether orally or otherwise) on all material terms of the "Transaction/Trade".*
- The definition of **'tradable instrument'** should be amended since (i) the definition of contract is more appropriate because it is already defined; (ii) the term 'venue' is not otherwise defined. We suggest to replace it with the term defined 'organised market place'; (iii) the duplication of 'contract' in the final part of the definition should be deleted. Hence we propose the following:
 - *'tradable instrument' means ~~an instrument~~ contract for which an organised market place ~~venue~~ (including balancing market ~~venues~~) has specified a description of limited characteristics ~~of a contract~~ so as to make the basic terms of the contract easily identifiable.*
- in order to define the term **'order to trade'** in consistency with the proposals of the consultation we suggest the following amendment: *"Order to trade" means ~~an~~ firm, electronic and written indication expressed by a counterparty to buy or sell a tradable instrument (including auctions, continuous trading) on an organised market place;*

Moreover, we believe that a further effort should be done to clearly distinguish “orders to trade” and “bid and offer”

- the definition of ‘**Market participant subject to reporting obligations**’ seems to differ from the definition of ‘market participant’ in Reg. 1227/2011. Whilst we believe that a better specification is appropriate, we ask for further clarity, in particular concerning supply firms. Indeed from the definition proposed it is not clear whether firms buying energy commodities in the wholesale market in order to supply final customers, either through standardised or non-standardised contracts, should be subject to the reporting obligation. We appreciate a clarification in this sense. In general, we appreciate the inclusion of large final customers among the reporting parties: for the sake of simplicity, we suggest to also assign to large final customers the duty to report energy contracts they enter in: this would contribute to avoid duplication of information reporting and would permit suppliers comply with their confidentiality duty; this would also help overcoming the inconvenience that customers are often the only subjects aware of their consumption total capacity and of the sum of their energy supply contracts. Furthermore, it is not clear if the definition implies that all intragroup transactions are subject to reporting when it says *“including producers supplying their production to their in-house trading unit or energy trading company”*. As explained previously, our opinion is that reporting of these transactions should not be required, at least not on a regular basis. We also believe that this provision should not be clarified in the scope of the definition of “market participant subject to reporting obligations” but in the scope of the definition for “types of transactions subject to reporting obligations”.
- “Standardised contract” generally means a contract admitted to trading at an organised market place and subject to a standard framework energy trading agreement. While the concepts “**standardised contract**” and “**non-standardised contract**” generally convey what market participants understand these to be currently, we all know that due to various regulatory initiatives (e.g. EMIR), there is a “sliding scale” between these two categories and whereby there will be a tendency towards standardisation. Hence the content of both concepts is highly likely to evolve over time, and yet many sections of the consultation make an important distinction (e.g. in reporting content, timing, channel...) between both categories. It is key that ACER monitor the evolution of this “sliding scale” and keep all market participants informed (and to consult them on a regular basis) as to its judgment to which category any tradable instrument belong, in order to avoid “erroneous” reporting.
- The definition of “**derivative**” or “**derivative contract**” makes explicit reference to financial instruments as defined under MiFID Directive 2004/39/EC. As a MiFID review is ongoing, it is possible that the future definition of financial instruments undergoes changes and these changes could be substantial. We thus suggest including reference to possible adjustments in the definition of financial instrument as a result of the outcomes of MiFID/R reviews, with the view to avoid any possible future inconsistency.
- We believe that the definition of ‘**Energy commodity or energy commodity contract**’ is out of scope of REMIT and it is preferable to replicate the definition of ‘wholesale energy contract’ included in REMIT.
- The definition of “**Spot market**” should specifically reference to energy/gas and electricity markets only. Other commodities are not in scope of data collection under REMIT.
- The term, **organised market place**’ should be better defined, preferably on the basis of the terms used in financial regulations. It makes for example reference to MTF, but the concept of an MTF is not itself defined, nor is reference to MiFID given where this concept is in fact defined.

- Finally further definitions should be introduced, in particular we suggest: **confirmation, settlement, scheduling, nomination, initiator trader, aggressor trader, long-term** (in relation to the list of contracts) and **linked transaction** (in relation to the details to report).
- A definition of **“regulated information”** should also be included, as part 4 of the consultation paper (and question 17) refers to the reporting of “regulated information”. In our view, the definition should be consistent with the relevant articles in REMIT and in the 3rd Energy Package and also particularly based on details of the fundamental electricity data transparency guidelines (FEDT), currently under revision. ACER should ensure to request information on this on the same granularity/frequency as the FEDT.

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?

ACER recommendations and the Commission IAs should define the details to be included in the record of transactions with the maximum possible clarity. For instance, given the proposed wording of the consultation document, it is not completely clear to market participants what exactly to report for some fields (transaction type, price elements, product delivery profile, delivery point zone ...)

Generally speaking, EURELECTRIC would like to stress that all reporting of transaction data under REMIT should be proportional with, and restricted to the stated objective of REMIT i.e. allow monitoring of potential market abuse, and should not pose excessive burdens upon market participants, as also referred in recital 19 of REMIT.

Reporting non-standard contracts is not explicitly foreseen in REMIT, however EURELECTRIC believes that it would be burdensome and could not be done automatically but would require manual work. Furthermore, the reporting of non-standard contracts would do little to support the detection of market misbehaviour.

Therefore ACER should recommend to the EU Commission that the reporting of non-standard contracts is too costly and of limited benefit for market monitoring. We support instead an obligation to maintain records of non-standard deals to be made available on request.

If the reporting of non-standardised contracts is required, we do not support the need to identify two separate sets of information to be submitted, as this would increase complexity in reporting. We believe it would be easier if the characteristics of non-standard deals that cannot be identified will not be recorded and reported. The requirements in Annex II.2 should be reduced to be manageable for companies (e.g. qualitative characteristics of the non-standard contracts portfolio of each market participant and aggregated volumes/delivery points related to each contract). If a particular issue arises following the normal monitoring activities accomplished by ACER with qualitative reporting about this type of contracts, one possible preliminary step could be to initiate a more in-depth analysis regarding a particular contract in the framework of actions taken by NRA(s), as foreseen in REMIT. In particular, we do not agree with the uploading of the PDF contract. We consider that it should be provided to regulators only upon specific request and when there is a suspicion of misbehaviour.

It is crucial that all information reported to ACER is treated as confidential. It should be ensured that no unauthorised third party has access to that information, especially concerning non-standardised contracts that can show a lot regarding a company's commercial and hedging strategies.

Finally, apart from providing the list of details to report, we believe that ACER recommendations to the Commission should also give some technical specifications on the practical implementation of reporting and operative procedures for data transmission:

- Technical specifications on how to send reports and receive feedbacks (for instance, xml files via web service or txt files via ftp...)
- Message process flows (message statuses: sent, acknowledged, accepted, rejected...)

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?

EURELECTRIC would support the proposal to collect orders to trade in standard products from organised market places, although we do not know if these venues have systems in place able to capture bid and offers that are not successful. However, this burden cannot be put on market participants as they do not have the means to record and report these data.

EURELECTRIC disagrees with the statement in paragraph 2.2 that in general orders to trade are captured via contractual documentation and stored by energy trading companies. Indeed only bid and offers that have been *accepted* are stored and used as input for trading books. We believe it would be worthwhile to receive a clarification of this point in the final recommendations.

Finally from the proposed recommendation it seems that market participants will be required to report *directly* to ACER only transactions in non-standard contracts. It should be clarified instead that bilateral transactions in standard contracts (not concluded through organised market places), will have to be reported directly as well. In this respect, reporting of orders to trade should also be excluded for this category of contracts, as it would otherwise imply an onerous direct reporting of orders to trade by market participants; alternatively, all bilateral contracts could be classified and reported as non-standardized contracts for the purposes of REMIT reporting, so that their order to trade reporting would be automatically excluded.

We have the following particular comments regarding the fields described in Annex II.1 according to our best understanding of the format described:

- A dependency matrix could be implemented to explain the use of certain fields, distinguishing between mandatory fields in all kinds of transactions and mandatory/optional fields depending of the type of transaction/value set for one field. Example: fields 6, 7 and 8 could exist or not, field 12 only could be mandatory if field 11 is declared as “for the account of/on behalf of a client”.
- Field 2 must be “ID of the market participant”, acting as the party linked with the counterparty declared in field 4. Two situations regarding reporting responsibility could occur:
 - Participant of field 2 is reporting the transaction on behalf of the counterparty (field 4) if field 9 is filled-in with the ID of the party declared in field 2.
 - In the case field 9 is filled-in with a third party (venue, broker, power exchange, TSO, other market participant...), participants declared in fields 2 and 4 are reporting their transaction by the mean of a third party (field 9).
- Related to the reporting responsibility, we ask for clarification about the link between fields 9 (and 10) and section 5 in the registration format approved by ACER¹. That section allows a market participant to declare one or several delegated parties authorised by the market participant to report on behalf of it. Does it mean that a consistency check would be made between section 5 and the ID reported in field 9? In this case field 9 must be the market participant itself (field 2) or one of the third parties authorised at each moment. What happens if one of the parties delegates its reporting responsibility in the other party?

¹ See ACER decision n° 01/2012 relating to the registration format pursuant to article 9(3) of Regulation (EU) N° 1227/2011 http://www.acer.europa.eu/Official_documents/Acts_of_the_Agency/Directors%20decision/ACER%20Decision%2001-2012.pdf

- Assuming that a party (field 2) could have several counterparties under the same contractual framework, we suggest to explore the possibility to aggregate the reports in only one, by arranging only one root part containing the common details of the contract, and then splitting the contract details for each counterparty. This proposal could economise time and effort, in both human and technical terms. Same comment applies to field 15.
- Field 14 could be useless if a field format is not defined. It is too prescriptive to require the reporting of the characteristics of the contract under this field. Same comment applies to field 19.
- Further clarification is needed in fields 21, 23 (understood as optional)

Question 4 - Do you agree with the proposed way forward concerning the collection of transactions in non-standardised contracts? Please indicate your view on the proposed records of transactions as foreseen in Annex II.2, in particular on the fields considered mandatory.

Notwithstanding response to Question 2, we have the following particular comments regarding the fields described in Annex II.2 according to our best understanding of the format and reporting requirements described there:

- It would be worthwhile clarifying whether the requirement to report updates or price changes in non-standard contracts would apply to pre-existing contracts that are already in place. In any case, we believe this information should not be required.
- It is absolutely disproportionate from ACER to require to compulsorily (even optional) upload of the PDF file of the contract while reporting a transaction and also to ask from ACER for an update of each change in price or quantity.
- Accordingly, fields 11, 12 and 18 are especially commercially sensitive and must not be subject to reporting obligations. It should be noticed that field 18 tries to preserve “some kind of confidentiality” relating commercial sensitive information while field 29 imposes absolute disclosing of that. That is not a correct and coherent implementation.

Question 5 - Please indicate your views on the proposed collection of scheduling/nomination information. Should there be a separate Annex II.3 for the collection of scheduling/nomination data through TSOs or third parties delegated by TSOs?

EURELECTRIC is not fully convinced that information concerning scheduling/nomination is necessary for market monitoring. However, as far information on the physical settlement of the transaction (i.e. information on scheduling/nominations) should be reported by TSOs or third parties delegated by TSOs, at least a clear indication on further details beyond those regulatory obligations already in place should be specified.

If further information does not seem to be necessary, cohesion with existing reporting obligations imposed on TSOs as well as existing systems for the fulfilment of such obligations should be preserved.

Nevertheless, in case ACER believes this information is needed, EURELECTRIC agrees that this should be delivered by TSOs or third parties delegated by TSOs in order to avoid burdening market participants with submitting the same data to both TSOs (for operational reasons) and ACER (for monitoring). It should be however made clear in the recommendations that in case TSOs or their delegated third parties are effectively used as a collection channel, this absolves the other market participants from their own responsibility vis-à-vis ACER regarding this matter, on condition that market participants provide the TSOs with all necessary information that is in line with the rules governing such information feeding to fulfil scheduling/nomination activities. Market participants cannot be held responsible for reporting delays or errors of any kind that result from TSOs actions. In fact, the same principle should hold for any third party, incl. exchanges, MTFs,... that report on behalf of other market participants.

Furthermore it should be investigated whether the formats required by TSOs are sufficiently standardised in order to avoid that the information submitted must be reworked before it can be used for the one or the other purpose.

Regarding the two options (separate annex or not), we believe that, as far as electricity is concerned, most information are covered in the FEDT where physical flows get reported. ACER should be careful not to duplicate the list or make the two lists inconsistent. We believe that ACER should rather directly refer to the FEDT instead of creating a separate annex.

Question 6 - What are your views on the above-mentioned list of contracts according to Article 8(2)(a) of the Regulation (Annex III)? Which further wholesale energy products should be covered? Do you agree that the list of contracts in Annex III should be kept rather general? Do you agree that the Agency should establish and maintain an updated list of wholesale energy contracts admitted to trading on organised market places similar to ESMA's MiFID database? What are your views on the idea of developing a product taxonomy and make the reporting obligation of standardised contracts dependent from the recording in the Agency's list of specified wholesale energy contracts?

We agree that the list of contracts to be reported in Annex III should be kept general, however certain clarification is needed. We should avoid the risk of uninformed interpretation across the EU of the types of contracts which are subject to reporting obligations. A clear, well-defined list of to be reported contracts can help market participants to fulfil their reporting obligation, but, a conclusive and comprehensive list would be necessary to create legal certainty and clarity because a simple repetition of the REMIT text or wide, vague definition of wholesale energy products would not create this. Also, it is questionable if such a list would be flexible and updated enough to accommodate market developments. In any case, a stakeholder consultation during the definition process seems necessary.

EURELECTRIC supports the proposal to develop product taxonomy, whilst recommending using existing practices to the largest extent possible. EURELECTRIC favours the idea of establishing a list of wholesale energy contracts to facilitate data collection under REMIT with a phased approach. We would prefer that ACER periodically publishes the resultant list of reportable contracts and allows market participants a reasonable amount of time (e.g. 3 months) to make the necessary systems/process adjustments. Of course, we should be aware that product taxonomy could contribute to enhance security of interpretation of transactions to be reported for standardized contracts, but would not solve the same issue for non-standardized contracts.

In **Section A**, The definition (4) 'two-days-ahead' seems rather uncommon. On the other hand a definition of 'working days', more common in gas markets, is missing.

The definitions in (6) and (7) are not fully clear.

In particular, it is unclear if the definition in (6) applies to both standard and non-standard contracts. Moreover it is not clear what the definition of 'long term' is since there is no reference to a time period. We suggest specifying that this should cover contracts lasting more than the periods mentioned in (1) to (5).

Concerning (7):

- It is unclear why there is a general reference to 'commodity contracts'. Such a definition may include all commodities and we do not believe this is the intention. We suggest therefore replacing it with 'electricity and natural gas contract', which would be consistent with the scope of REMIT.
- There is an overlap with (6), unless (6) would cover non-standard contracts only.
- There is an additional overlap between the initial part of the description and the contracts mentioned in (1) to (5); therefore we suggest excluding explicitly contracts with delivery period mentioned in (1) to (6).
- Finally it is our understanding that derivative instruments that are settled *in cash* are considered financial instruments under MiFID; therefore the reference to these types of contracts is redundant.

We agree finally that there is no need to require the reporting of derivatives as defined by MiFID, as these contracts are to be reported to Trade Repositories as foreseen by EMIR and ACER should have access to any transactions in derivatives, which have an underlying gas and electricity commodities.

Regarding **Section B**, we believe that the title should be amended as follows: ~~Commodity~~ *Capacity contracts for the transportation of natural gas or electricity in the Union*. Indeed transportation contracts are capacity and not commodity contracts.

For the sake of clarity, we would also suggest adding the temporary exemption for contracts in balancing markets (p. 14) to the list of contracts. In fact, if the main reason for ACER to suggest exclusion of balancing contracts from reporting is that they are still highly differentiated across Europe, this remains true for countries with mandatory balancing requirements.

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.

EURELECTRIC reaffirms the need for clarification of the definition of market participants subject to the reporting obligation.

EURELECTRIC agrees with ACERs statement that definitions of a *de minimis* threshold have to be balanced against the requirement to be able to identify the parties of the transaction according to Article 8 (1) of the Regulation. EURELECTRIC therefore generally prefers option A, since markets may be manipulated by all market participants, regardless of their size. A threshold should be introduced only for pragmatic reasons (i.e. reduce the burden on market participants for trades of very small amounts traded bilaterally) and it should not discriminate between market participants. However we believe that platform operators should report all trades without any *de minimis* thresholds.

Question 8 - Are there alternative options that could complement or replace the three listed above?

See response to question 7.

Question 9 - Do you agree with the proposed approach of a mandatory reporting of transactions in standardised contracts through RRMs?

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. It should also be further specified in ACER's recommendations to the Commission how the proposed approach will work. It should for example expressly say that the compliance of a market participant with reporting obligation is guaranteed in presence of a contract between the market participant and the RRM stating that the RRM is in charge of reporting on behalf of the market participant (including both pre-trade and post-trade stage information). It is also important to bear in mind that reporting obligations should not create unnecessary costs for market participants and it should be avoided that some RRMs abuse their position by charging fees in case reporting through RRM is considered mandatory. In this perspective, we suggest ACER to monitor closely this issue to ensure that excessive fees are not charged on operators. In fact, we believe this should be free of charge.

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.

More generally, as observed in response to question 3, we recall that market participants should in any case be required to report *directly* to ACER transactions in standard contracts not concluded through organised market places (i.e. bilateral deals).

In any case it should be made clear that market participants on whose behalf data are reported have to have access to the data. Otherwise the market participant will not be able to answer any potential upcoming questions.

Granularity of submitting data, responsibilities for the correctness and completeness of reported data have to be clearly defined in advance, whereas the responsibilities should be in general with the data owner.

Question 10 - Do you believe the Commission through the implementing acts or the Agency when registering RRMs 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?

EURELECTRIC believes that information to be collected by ACER for market monitoring could be a source of information for pre- and post-trade transparency; however we would like to ensure and note that the information to be publicly disclosed should be only a subset of the information provided to ACER and that for pre- and post-trade transparency there are already specialised firms providing timely information on standard products.

The provision of a single, harmonised IT-System and format for registration and reporting is preferable, so that all NRAs and ACER should share the same IT-System and format. Corporate groups with several, separate legal entities in different Member States should not be subject to different IT-Systems and formats.

Preferably ACER should rely on one existing open standard electronic transaction data format rather than expecting to source all data through common platforms.

Question 11 - Do you agree that market participants should be eligible to become RRM themselves if they fulfil the relevant organisational requirements?

Yes, however 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 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.

In general for the sake of an unified approach to the REMIT implementation we support further determination of general requirements for all reporting channels (e.g. to ensure data security and confidentiality, to prevent and detect errors in advance etc.); details on technical standards would be also welcomed.

In this regard we reiterate that due account should be taken of proper stakeholder involvement and appropriate timeframe for implementation.

An efficient way of data reporting is highly welcomed. Nevertheless, the fulfilling of reporting obligations in the role of a RRM is combined with manifold responsibilities and additional work load. As outlined in question 9), a clear definition of responsibilities, compensation mechanism as well as tasks for RRMs has to be ensured. In general, the over-taking of the role as a RRM should be on a voluntary basis and up to the decision of the prospective RRM.

Question 12 - In your view, should a distinction be made between transactions in standardised and non-standardised contracts and reporting of the latter ones be done directly to the Agency on a monthly basis?

The requirement to report 'no later than the working day following the conclusion' is challenging. EURELECTRIC believes it should be seen as the maximum frequency requirement and that transactions in standard contracts should be required to be reported *not earlier than end-of-next business day after* the initial trade capture. We believe that this is the only solution technically feasible and economically appropriate.

Concerning transactions in non-standard contracts we reiterate our view that they should only be kept at disposal of ACER and of the competent authorities and should not be reported as they have limited impact on price formation and are complex to report due to the often complex internal set-up of large energy companies. In case ACER's final recommendation takes the view that market participants have to report non-standardised contracts, we suggest to limit the number of mandatory fields and not to request any submission of the contract. EURELECTRIC does not support the need to identify two separate sets of information to be submitted as this would increase reporting complexity. We believe the characteristics of non-standard deals that cannot be identified will not be recorded and reported. Moreover, we estimate that at least two months would be necessary to provide information on such contract.

Question 13 - In view of developments in EU financial market legislation, would you agree with the proposed approach for the avoidance of double reporting?

EURELECTRIC agrees with the proposed approach to avoid double reporting. The avoidance of double reporting must be a key driver in the design and implementation of the overall regulatory framework into which energy companies are scoped. However, in case this approach would require market participants to bear additional costs, a market participant should be given the option to choose for direct reporting. Furthermore, we believe that ACER should also take into consideration MAD/MAR when considering double reporting. There could be for example overlaps with “derivatives”. Last but not least, ACER should not implicitly consider that energy companies will be covered by MiFID/R.

EURELECTRIC recommends (i) trade repositories (TR) which could provide data to the ACER as referred in Article 81(3) (j) of EMIR to be agreed as a registered reporting mechanism (RRM) under REMIT, (ii) financial and energy regulators to coordinate reporting obligations between themselves, so as to ensure good transmission of information concerning the non-financial energy companies.

Question 14 - Do you agree with the proposed approach concerning reporting channels?

Yes, EURELECTRIC supports the proposed approach regarding reporting channels.

We however reiterate the need to keep the possibility for market participants to report directly all reportable contracts in case this deems as preferable and should not be obliged to become RRM if it has only to report some of its contracts to ACER.

For any reporting channel (reporting through RRM or from market participants), it is important that clear processes and secure channels are identified. Organisational requirements to guarantee security, confidentiality, avoid unauthorized access to data and leakages to media are of the utmost importance. This is true for both RRM and ACER. For both, the best certification of system quality available should be adopted, as well as strict internal rules ensuring that confidentiality is guaranteed by any employee. For example, it should be forbidden to ACER ex-employees having dealt with confidential information to carry out some activities linked to the energy business during a reasonable period of time.

Question 15 - In your view, how much time would it take to implement the above-mentioned organisational requirements for reporting channels?

The timeline will depend for big parts on ACERs communication mechanisms and tools. ACER will have to determine the reporting channels, and systems to be in place at first (what platform should be used, what IT prerequisites does this imply, how is the connection to the platform provided and secured, what IT protocols need to be installed, etc... ?). Only then will market participants be able to propose an approximate timeline. Ideally therefore, ACER would have an open process with the NRAs and give regular progress reports, so that the market participants can start preparing and give more relevant suggestions on the time needed for implementation.

EURELECTRIC believes that the adequate set-up of robust RRM will take approximately 1 year.

What happens if reporting obligation enters in force and reporting channels (organized markets, brokers, RRM) and systems are not ready? In this case, should reporting of any transaction, including standardized contracts in organized markets, and including orders to trade, be done directly by market participants? Given the large burden that this would cause to market participants in terms of IT adaptation, and given that this would be necessary only for an interim period, we suggest that the obligation is not in force until all the RRM systems are ready and registered.

Question 16 - Do you agree with this approach of reporting inside information?

EURELECTRIC believes that centralised platforms for the publication of regulated information on gas and electricity markets are the most favoured outcome in the mid-term and we appreciate the fact that this proposal is consistent with the recent ACER discussion paper on disclosure of inside information. It is worthwhile noting that across Europe there are already in place platforms, either managed by TSOs, market participants or exchanges, providing the publication of regulated information.

EURELECTRIC believes that requiring market participants to report to ACER such information at the same time it is disclosed would imply duplication of efforts. Furthermore ad-hoc information that is not systematized should not be required to be reported directly to ACER.

Regarding the ACER's discussion paper on disclosure of inside information through platforms, EURELECTRIC will send feedbacks at a later stage as we need more time to consult our membership on this issue. In any case, we strongly believe that reporting obligations on market participants should be minimised by collecting the required information or parts thereof from existing sources where possible, Art. 8(6).

We welcome the opportunity to discuss the disclosure of inside information according to Article 4(1) of Regulation (EU) No 1227/2011 (REMIT) through platforms. Although we appreciate and support the approach to further specify unclear and missing issues of REMIT, some crucial points not mentioned in the discussion paper have to be raised in the debate.

Firstly, as many of the market participants recognized that probably none of the existing transparency platforms fulfil at least the REMIT-precondition of a timely disclosure, they decided to adapt their companies' homepages and have disclosed whatever could be interpreted as inside information since then. This situation counteracts ACER's needs for an effective monitoring as well as markets desire for centralized information and, moreover, unnecessarily ties up resources and causes considerable costs for each market participant. In our view, the actual situation is not caused by the absence of adequate transparency platforms but mainly by the unclear consequences for market participants (and platforms) in case of false, late or non-disclosure of inside information through intermediaries as Article 4(1) REMIT obliges solely and exclusively the market participants to disclose inside information. This lack of clarity hinders market participants to rely on or even push ahead inside information platforms. Therefore, we suggest linking the admission of a transparency platform to be a Regulated Information Service (RIS) with the confirmation that all market participants disclosing their information through this platform fulfil the requirements of a timely, simultaneous, complete and effective public disclosure and will not be held responsible for failures after sending the information to the platform. Otherwise, market participants must keep their in-house solutions and a potential additional reporting or disclosure to platforms would constitute once more expenses without any visible benefits and would therefore probably be refused.

Secondly, not being sure in which way ACER or NRAs would oblige existing or future central transparency platforms to adapt in order to ensure a timely disclosure of inside information in absence of a mandate or a legal basis, we propose not to exclude potential future developments by limiting the circle of candidates as proposed by option A and B but setting up a clear admission-framework for RISs and declaring the disclosure of inside information to this systems as being sufficient in the meaning of REMIT.

In any case, market participants should retain the flexibility to publish their information directly and report it directly to ACER. This is in particular necessary, if the central platform(s) fail(s) to operate correctly.

Question 17 - Please indicate your views on the proposed way forward on the collection of regulated information.

We believe that the most pragmatic approach for ACER is to collect regulated information through existing sources (TSO platforms, PX platforms, brokers...). The role of ACER should also be to facilitate the adoption of a single standard that can be applied by all market participants/platforms. Furthermore ACER will also be able to monitor inside information through the channels that will be indicated in the public register of wholesale market participants.

Question 18 - Do you agree with the proposed approach for the reporting of regulated information? Please indicate your view on the proposed mandatory reporting of regulated information through RISs and transparency platforms. Should there remain at least one reporting channel for market participants to report directly to the Agency?

In our view, the best way to allow timely disclosure and publication on a common platform is that inside information is:

1. communicated by market participants and operators to TSO/PX/other transparency platforms
2. published by TSO/PX/other transparency platforms
3. sent to ACER by TSO/PX/other transparency platforms in electronic form

Compliance of the market participant with obligation of disclosing inside information should be guaranteed when it communicates it to the TSO/PX/other transparency platform. In other words, once communicated the inside information to the platform, it does not have to additionally publish on its website, nor to follow up and constantly check if the information has actually been published by the platform

We would like to stress once again that the Agency has not the right to create additional reporting obligations. The Agency has the right to define which transactions need to be reported (the purpose of this document) but any other information is defined by the transparency guideline, to which REMIT Art 3.4., 4.2. and 8.5. point. ACER's recommendation shouldn't go beyond those articles. To avoid the confusion, we suggest introducing a better definition of "regulated information" (see answer to question 1).

In case Regulated Information Services will be in place, we favour the option for market participants to choose their service if they assess this is efficient. We favour the possibility for market participants of using RIS as a reporting channel; however mandatory reporting through RIS is not supported by EURELECTRIC. As also suggested by ACER, we believe there should indeed remain the alternative option of reporting directly to ACER.

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.

We believe that applicable thresholds concerning transparency information have been in some cases already identified through market practices. In particular this applies to the electricity market where data regarding production units of at least 100MW are usually subject to disclosure of availability and production data. Consistency between transparency threshold and inside information threshold is key to contribute to simplify the process of reporting.

Question 20 - What is your view on the proposed timing and form of reporting?

We believe that information should be collected through existing platforms by ACER. This could be done at the same time it is published or at a later stage consistent with the monitoring activity.

We believe that draft recommendation #10 is too open. Fall back procedures, exceptional circumstances are not proposed.

Besides that, no additional reporting duties must be required from ACER to market participants. Regardless literal of Article 8(5), it must be set clear that ACER have the possibility to collect the regulated information (provided this term is correctly defined) from the existing platforms by ACER's own means. We do not agree with the following ACER statement in section 4.3.1: *„The implementing acts could foresee that whenever market participants disclose regulated information, they shall at the same time file that information with the Agency and make it available to the competent national regulatory authorities without delay.”*



Union of the Electricity Industry - EURELECTRIC aisbl
Boulevard de l'Impératrice, 66 - bte 2
B - 1000 Brussels • Belgium
Tel: + 32 2 515 10 00 • Fax: + 32 2 515 10 10
VAT: BE 0462 679 112 • www.eurelectric.org