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Response of EnBW Trading GmbH on the draft ACER consultation paper "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 (PC_2012_R_10)

General remarks

Data collection (through reporting obligations) for market monitoring purposes is a complex and sensitive issue. In this respect it is absolutely essential that market participants can continue to be active within a framework that provides sufficient legal and operational clarity. Also it needs to take into account the specifics of the energy sector, be proportionate and should not lead to any undue burdens on market participants (particularly avoiding any duplication of reporting). We believe that the following principles regarding data collection and reporting must be respected:

- The collection and reporting obligations of power and gas wholesale data must be directly related to the regulatory purpose of REMIT (i.e. allowing regulators to monitor potential market abuse) and must not serve any other purpose.
- The collection and reporting obligations of power and gas wholesale data must serve strict cost-efficiency criteria avoiding any undue burden on market participants. This is essential in order not to compromise the further development of these markets by creating barriers to entry and limiting trading activities (i.e. hampering liquidity).
- It is absolutely essential that for the any collection and reporting obligations state of the art security standards are applied also ensuring the highest standards for ensuring the confidentiality of commercially. This is even more important as reporting and storing of such data by third parties is considered as a possible channel and the more parties may be involved in handling commercially sensitive data. In this context we would also like to point out that legal obligations regarding data security also need to be kept in mind (e.g. rules according to Directive 95/46/EC, ISO 2700x or the German BDSG.

We highly encourage ACER to set-up a strong cooperation with other relevant authorities and in particular with ESMA. It is absolutely essential that the reporting requirements according to the various pieces of legislation (e.g. REMIT, EMIR, possible national obligations (such as the Markttransparenzstellengesetz)) are well-coordinated in order to avoid any double reporting obligations which would otherwise result in potentially massive additional burden (e.g. financial. personnel, IT resources) for market participants.

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

We believe that it is very important to provide clear definitions in order to avoid any ambiguity for market participants when implementing the reporting requirements. For detailed comments on potential improvements regarding the proposed definitions we would like to refer to the EFET response which we fully support.

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?

Yes, we believe that there should be a distinction be made between standardised and non-standardised contracts. We would like to point out that non-standard contracts are usually very bespoke contracts that do not fit in any pre-defined reporting schedule. Also, due to their structured and bespoke nature we do not necessarily see the direct impact on wholesale markets and thus the need to automatically report them (including life cycle amendments) to ACER. Thus we do not support the proposal to report the full contracts for non-standard transactions. These contracts are, nevertheless, recorded and are available on request to the competent authority if needed. If it is, however, decided by ACER to still include these contracts in the reporting obligations we strongly ask for an approach where only minimum basic information to the contract should be reported while possible updates should only be reported on a quarterly or even annual basis.

Regarding the identifier for market participants, we believe that existing codes should be used until the planned LEI is introduced. We do not support the introduction of yet another intermediary identifier for the purpose of transaction reporting. There should be a published list of all IDs.

Regarding the details to be included in the records of transactions as foreseen in Annex II, we are not convinced that all of these data is really necessary for the purpose of monitoring potential market abuse (e.g. no 15-19 of Annex II.1) and should be reduced to a minimum level. Other information may not be ready to be reported in the determined way by market participants; e.g. the reporting of the beneficiary seems not always straight forward (as often such a "1:1 relationship" does not exist) while other information may only be available from platforms.

Some specific comments to Annex II.1:

- Field No 6./7.: If a trade is not executed on a trading platform, a distinction between "Initiator" and "Aggressor" is not possible
- Field No 31. "Cancelation Flag": The withdrawal information for orders is not always available (e.g. for voice trades) and this information is not recorded.
- Field No 36/37."Origination/Destination Market" for transportation: Clarification required for reporting different types of transportation contracts (P2P, Entry/Exit).

Furthermore, we have particular concerns regarding orders to trade as they are not ready to be reported by market participants and thus oppose ACER's view that " valid orders to trade are captured and stored in the market participant's energy trading and risk management software, where they are typically organised in trading books" – this is certainly not the case.

Finally, we would like to comment on the issue of intra-group transactions. We strongly support the exclusion of intra-group transactions and contracts from the standardised reporting requirements to ACER. It is important to recognise that these transactions are not executed on the wholesale market and thus do not fall under the scope of REMIT (and are not capable to potential market abuse).

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?

Generally, we would like to point out that market participants would currently not be able to report orders to trade on a continuous and automatic way. Thus we do not agree with ACER's statement that "orders to trade are captured via the contractual documentation and other forms of formal confirmation". It is essential to see that this is only given for those orders to trade that actually have been accepted resulting in a transaction. If ACER still comes to the conclusion that orders to trade are to be reported, we strongly support the proposed approach to collect orders to trade only and solely from market places.

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.

We would like to point out that non-standard contracts are usually very bespoke contracts that do not fit in any pre-defined reporting schedule. Also, due to their structured and bespoke nature we do not necessarily see the direct impact on wholesale market and thus the need to automatically report them (including life cycle amendments) to ACER. Also, it is absolutely important to point out that these contracts include very commercial sensitive information that need to be kept confidential under any circumstance (e.g. price formula etc); thus we do not support the uploading of the entire contracts.

If it is, however, decided by ACER to still include these contracts in the reporting obligations we strongly ask for an approach where only minimum basic information to the contract should be reported while possible updates should only be reported on a quarterly or even annual basis.

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?

We are not sure if data on scheduling and nomination is realy need for market monitoring purposes. If these information should still be collected we support the approach that they could be reported by TSOs or third parties delegated by TSOs in order to avoid any additional burden for market participants. It seems also worthwhile to refer to the reporting obligations under the Guidelines on electricity market transparency.

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?

Yes, we support the view that the list of contracts should be kept rather general, while, however, the setting should be kept fairly clear in order provide sufficient clarity for market participants. Certainly any changes to the list should be available online. It needs to be ensured that there is also close adjustment between the various legal requirements (i.e. REMIT, EMIR) also in terms of wording and references. If changes are made to the list (ideally after consulting with market participants), market participants must get sufficient time in order to get ready to report the new contract.

With regard to balancing, we support ACER's approach that contracts in balancing markets are not to be reported. In Germany, the balancing market is organised via the auction platform www.regelleistung.net which also provides market transparency; plus the NRA already has the competence to monitor these data.

Item 7 of Annex III (A) refers to "any other commodity contract": we believe that this is a much too open formulation and should be at least restricted to "electricity and gas contracts"

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.

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

Regarding the proposed case, we are not convinced of introducing further de minimis thresholds and thus would support option A.

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

First of all we support the approach that multi-channel reporting possibilities to report relevant data to ACER will be allowed. Generally, we support the approach of establishing RRMs. A mandatory reporting through a RMM can only be supported if a market participant who decide to report directly to ACER can also become a RRM for the purpose to do so. Thus it is very important to establish transparent and clear framework (e.g. in respect to obligations and requirements) for becoming a RRM. In particular, we believe that the requirements for market participants wanting to only report their own relevant wholesale transactions to ACER should be minimal (e.g. establishing and confirming compliance with

ACER's electronic communication protocols). Also, we believe that there should be a public register of all RRMs that have been approved by ACER.

If a market participants decides to report via a third party (on a contractual basis) that is registered as RRM, we believe that the respective reporting obligation is also transferred; it is impossible to ask the market participant to also continuously check whether the delegated third party RRM has actually properly fulfilled its task. Finally, we believe that ACER should closely monitor the possible fee structure of registered RRMs (in fact this may be considered as regulated business).

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?

Yes, we support that there should be a standard format adopted based on an open standard. In fact we believe that this is a key process and should be developed in close cooperation with market participants through public consultations as well as expert workshops. Also this process needs to be closely aligned with the relevant developments/requirements stemming form the financial regulatory world (e.g. reporting obligations under EMIR, MiFID, etc). In any case, parallel to developing the standards, the focus must also be put on key issues such as data security (including access rights) and confidentiality as these are essential issues that must be dealt with the highest priority.

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

Yes, we think that this is an essential option as it gives market participants the required flexibility in order to comply with their reporting obligations. In this context it needs to be made clear what is considered as "relevant organisational requirements"; these need to be developed ideally in consultation with market participants. We believe that the requirements for market participants wanting to only report their own relevant wholesale transactions to ACER should be minimal (e.g. establishing and confirming compliance with ACER's electronic communication protocols).

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?

Yes, there needs to be a clear distinction made between reporting of transactions in standardised and non-standardised contracts. As laid out before, we are not convinced of an automatic reporting process for non-standard contracts. If such a reporting will be required, we believe that transactions in non-standardised wholesale energy contracts should have to be reported with an appropriate time delay which in our view would be a quarterly basis. Due to the complexity of these contracts we believe that the proposed one month delay would not be sufficient.

In respect to reporting of standard contracts, we believe that the requirement "not later than the following working day" would be quite challenging; thus we propose change this to " end of next business day" as this would allow companies to run a proper end-of- day procedure with batch-reporting. Such an approach would also increase the quality of data reported to ACER. Furthermore we propose to introduce an "emergency rule" which allows in certain circumstances a delayed reporting, e.g. due to IT failure.

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

We fully support any approach that is designed to avoid any kind of double reporting in order to minimise the additional burden that non-financial companies will have to carry. We therefore encourage ACER to continue/strengthen the cooperation with other relevant authorities such as ESMA to ensure a close coordination of the respective activities. In this respect we would also like to point out that this approach should also be relevant for other authorities such as competition authorities as well as national competent authorities. Following the efficiency guidance any kind of duplication of reporting obligations should be avoided.

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

Yes, we support the proposed reporting channels, while it is important to consider them as alternatives with no obligatory requirements. Thus we believe that market participants should have the right to decide which reporting channel to choose.

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

Generally, the implementation time is strongly dependant on the respective reporting channel. If a market participants decides to directly report to ACER the setting up of the required infrastructure may be more challenging than other channels where certain IT-infrastructure maybe ready to use. However, this should not be counted as an criteria to leave out specific channels. It is important to recognise that non-financial market participants have not been subject to these kinds of reporting requirements. Thus there will be significant efforts be required to implement the reporting channels. We would estimate that such an IT-project could well require a time period of 12 months or more (this includes adjusting internal systems to the recording and reporting requirements; in any case there must be also sufficient time for a testing phase considered.

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

Regarding "regulated information" (i.e. transparency information) we believe that ACER should not start a new process in parallel to those requirements already defined under Regulations (EC) 714/2009 and EC (715/2009). For example, the draft rules on electricity market transparency already foresee defined contents, formats and locations for the publication of regulated information. Thus, we do not see any need to have a parallel process to be started and thus do not support that these data should be reported to ACER directly. For efficiency reasons and to avoid any double reporting requirements for market participants ACER (as well as NRAs) should simply use the existing sources. In any case there should no additional reporting obligations be introduced. The same holds true regarding the proposed reporting of "inside information" to ACER. In particularly, for the publication of insider information it is essential market participants can publish these in real-time to avoid and interruptions of their trading activities. For that reason and in the absence of central platforms that can comply with the REMIT conditions such as the timely disclosure of inside information, market participants have set-up their own "REMIT websites" (including possible back-up solutions).

As the disclosure process of inside information is critical we think that the approach of a Regulated Information Service (RIS) must be connected with very specific requirements, including:

- Market participants disclosing their inside information through this platform fulfil all relevant requirements according to REMIT (timely, simultaneous, complete and effective public disclosure).
- After sending the relevant data to the platform, market participants must be considered to have fulfilled their disclosure obligations and cannot be held responsible for any failure that may occur at the platform.

Market participants need the legal certainty that they have fulfilled their obligations and thus do not have to interrupt their trading activities. If this is not ensured, they are forced to continue their current disclosure channel; this does not seem to be ambitious in respect of efficiency. It is absolutely impossible for market participants to continuously check not only if the relevant data has been published but also with the correct content.

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

As stated under Q 16, we strongly propose to collect the relevant data from existing sources (e.g. EEX Transparency Platform, Nordpool, RTE). By the way, the set-up of the reporting of these data has already used significant resources and should not be mulled by setting up new or parallel reporting channels.

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?

First of all we believe that the term "regulated information" needs to be clearly defined; in any case this should not trigger any additional reporting obligations that would go beyond the requirements stipulated under REMIT.

As stated above, we believe that whenever possible relevant information should be collected through exiting platforms such as the EEX transparency platform. As mentioned under Q 16, we believe that specific requirements must be fulfilled before a final decision can be made.

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 do not see the need to foresee any further threshold for the reporting of regulated information as these are already defined e.g. under the 3rd package transparency guidelines (e.g. 100MW for electricity).

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

As stated above we do not support the approach of a parallel reporting system (i.e. disclosure of regulated information and also filing of that data to ACER) as this would mean an inefficient duplication of reporting requirements causing an unnecessary burden for market participants. Again, it is key for market participants that they can avoid any interruption of their trading activities which should not be compromised by any additional reporting obligation of the same information.

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