

Alberto POTOTSCHNIG
Director of ACER
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SI – 1000 Ljubljana

Brussels, Friday 13 November 2013

Subject: EURELECTRIC's comments to ACER's consultation on publication of extracts of the REMIT's European register of market participants

Dear Mr. Pototschnig,

EURELECTRIC – the sector association representing the electricity industry at pan-European level – would like to thank you for the opportunity to provide you with some comments regarding the consultation launched by ACER on the publication of extracts of the REMIT's European register of market participants. Please find attached to this letter EURELECTRIC's responses to the consultation questions.

In general, we believe that the registration format proposed by ACER is sufficient for the purposes of market monitoring. In fact, we believe that some pieces of information requested would be more than sufficient and even excessive in some areas, as already mentioned in our response to the ACER's consultation of May 2012.

As a key issue, we would welcome some further clarification regarding the scope of the confidentiality provisions. We indeed firmly believe that it is key to protect commercial sensitivity and professional secrets of any company information received under REMIT, which could legitimately include some of the information in the five sections that market participants have to complete for registration purposes and welcome the confirmation in the consultation document that articles 12(2) and 17 apply to the EU Register.

In order to ensure, and recognize that, the full protection of Article 12(2) (and Article 17) applies to the EU Register and publications of extracts thereof, we would very much welcome if ACER could confirm in its decision on this matter that the protection of the wording in Article 12(2) which provides that “commercially sensitive information on individual market participants or individual transactions or individual market places are not disclosed and cannot be inferred”, the most important words here being “and cannot be inferred”, explicitly applies to Article 9(3) and the EU Register. This will ensure consistency between Articles 12(2), 17 and 9(3) from a protection of the

confidentiality of REMIT information viewpoint. We would also welcome a confirmation that Article 11 (“data protection”) does also apply to the EU Register.

Please find attached EURELECTRIC’s detailed responses to the consultation’ questions. Should you have any questions, please do not hesitate to contact the EURELECTRIC’s market team [REDACTED].

Yours sincerely,

[REDACTED]

[REDACTED]

[REDACTED]

Responses to the consultation questions:

1) Information necessary for market participants to complete their registration obligations according to Article 9(1) of REMIT:

- a) Is the scope of data foreseen to be published sufficient for market participants to complete their registration, especially with regard to the information required in Section 4 of the registration format, and thus fulfil their obligation under Article 9(1) of REMIT?**

We believe that the scope of limiting the data foreseen to be published to “market participant name” and “ACER Code” is appropriate as these are required for reporting details under Article 8 of REMIT.

- b) In order to identify or verify the identity of a related undertaking, is the publication of information in fields 108 to 110 (address, city, postal code) necessary and appropriate?**

Although this information is not confidential and is fully accessible by other means, we do not believe that the publication of this is necessary as we could risk of having requests or communications related to REMIT unduly sent to this postal address. If ACER decides to disclose the postal address in the public register, we would suggest adding the following disclaimer: “not for contact purposes”.

- c) Is the publication of other company’s identifier such as VAT Number in field 112 or the codes in fields 113 to 116 (EIC, BIC, LEI, GS1) or 118 (trade register) necessary and appropriate (please take into consideration that they might not be available for all market participants)?**

Counterparties should be able to easily obtain details bilaterally from each other if details on their transactions are required to be reported under Article 8 without the details in question 3 here having to be published. But the publication of the VAT number and if applicable the LEI would be appropriate. This could be particularly useful when entering into transactions with companies belonging to a group, where several entities of the group could have very close company names or even the same address. Both these identifiers usually exist in market participants IT systems.

- d) Do you believe that the scope of data to be published from the European Register should be increased or decreased?**

In line with enabling reporting under Article 8, the scope of publishing “market participant” “ACER Code” is sensible. The rationale that market participants require these details so section 4 can be properly completed is questionable as if a party has a corporate structure/ relationship with another party then by virtue of that relationship, all of the details for section 4 should be easily ascertainable bilaterally between the related parties. Rather the rationale would seem to be that the publication of the participant’s name and ACER code will facilitate ease in reporting required under Article 8 of REMIT. We would welcome clarity on the rationale for how publishing extracts from sections 1, 2, 3, 5 first will allow section 4 to be better completed at a date later than registration under sections 1-3, 5?

2) Information to improve the transparency of wholesale energy markets

a) **Is the scope of data foreseen to be published for transparency purposes appropriate?**

It is agreed that the proposed fields for publication listed (state, NRA, website, publication inside information, date of validity) are appropriate and useful particularly for transparency in disclosure of inside information. For the sake of traceability, we would suggest to replace the “Date of validity” proposed by ACER by the “Date of first registration of the market participant” and the “Date of last update of data showed in the public register”.

Regarding field 120: it may be the case that certain market participants are not in the scope of the insider information publication (e.g. not assets) -> can this be a mandatory field?

b) **Do you believe the scope of data to be published from the European Register for transparency purposes should be increased or decreased?**

The proposed scope of data to be published for transparency purposes is appropriate. It does not need to be increased. It is particularly important that the data with regard to natural persons (section 2) is protected – data protection legislation must be respected continually. Furthermore, commercially sensitive information and professional secrecy rules must be adhered to at all times in publication and it is crucial that the publication of extracts from the European Register does not lead to the disclosure of commercial secrets or does not permit commercially sensitive information/ data on market participants, related natural persons, individual transactions or market places to be inferred. Any future proposal to expand the breadth of extracts to be published from the European Register beyond that suggested here should also be subject to public consultation.

Additional comment:

Please find below an additional list of specifications of the EU Register we would consider useful to be publicly available:

- We believe that the EU Register should be published for the first time in advance of the starting of reporting obligations to allow a transparent and easy identification of all potential counterparties.
- We believe that the day when the EU Register is first published should be officially set because it launches the 3-month deadline to fill in section 4 for existing market participants already registered; this would provide further legal certainty.
- We believe that existing best practices in similar circumstances should be followed to properly manage the subsequent updates of the public register. In particular:
 - To define ex-ante the minimum and mandatory periodicity of updates of the public register (even if no updates result at a certain time).
 - To show the date and hour of the last/next update in the ACER website together with the list.
 - To enable the possibility to voluntarily subscribe to a news alert or web feed.
 - Ensure that the list is easily downloadable and manageable.